Outlook

**[EXTERNAL] 25-00XXX-UT-2025-06-13-PNM-Application for Amended Special Service Contract_PPAs and ESAs_Amended Rate No. 36B and Amended Rider Nos. 47 and 49**

**From** Contreras, Lisa <Lisa.Contreras@pnm.com>

**Date** Fri 6/13/2025 3:02 PM

**To** Records, PRC, PRC <PRC.Records@prc.nm.gov>; Kippenbrock, Ana, PRC <Ana.Kippenbrock@prc.nm.gov>; Ryan, Christopher, PRC <Christopher.Ryan@prc.nm.gov>; Kreienkamp, John , PRC <john.kreienkamp@prc.nm.gov>; Rettig y Martinez, Alejandro , PRC <alejandro.martinez@prc.nm.gov>; Lundin, Robert, PRC <Robert.Lundin@prc.nm.gov>; Cameron, Scott , PRC <scott.cameron@prc.nm.gov>; cmelendrez@abcwua.org <cmelendrez@abcwua.org>; dahlharris@hotmail.com <dahlharris@hotmail.com>; kherrmann@stelznerlaw.com <kherrmann@stelznerlaw.com>; eflores@stelznerlaw.com <eflores@stelznerlaw.com>; nwinter@stelznerlaw.com <nwinter@stelznerlaw.com>; bvigil@bernco.gov <bvigil@bernco.gov>; Mateo@transformconsulting.com <Mateo@transformconsulting.com>; mdemeule@bernco.gov <mdemeule@bernco.gov>; mreno@reno-energy.com <mreno@reno-energy.com>; ndowney@bernco.gov <ndowney@bernco.gov>; vjoe@bernco.gov <vjoe@bernco.gov>; Kenmartinez@bernco.gov <Kenmartinez@bernco.gov>; bchapman@cabq.gov <bchapman@cabq.gov>

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Good afternoon,

Included herein please find the link to access the electronic filing and service of PNM's Application an Amended Special Service Contract, Purchase Power Agreements, Energy Storage Agreements, Amended Rate No. 36B and Amended Rider Nos. 47 and 49. PNM's filing feel of $25.00 is attached separately and will be mailed to the NMPRC.

"25-00XXX-UT-2025-06-13-PNM-Application for Amended SSC_PPAs_ESAs_Amended Rate No 36B_Rider Nos 47 and 49.pdf" for you to view.
https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:0d95d2c5-b38f-49bc-8a09-66131c61693b

You don't need to download Acrobat to access the file.

Thank you,

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June 13, 2025

Ms. Melanie Sandoval
Records Bureau Chief
New Mexico Public Regulation Commission
Prc.records@prc.nm.gov
PO Box 1269
Santa Fe, NM 87504

25-00048-UT

**Subject: Application for Approval of an Amended Special Service Contract with Greater Kudo, LLC, Three Purchased Power Agreements and Three Energy Storage Agreements Pursuant to 17.9.551 NMAC, an Amended Rate No. 36B, Amended Rider No. 47 and Amended Rider No. 49**

Dear Ms. Sandoval:

Enclosed herewith for filing please find Public Service Company of New Mexico's ("PNM") Application for Approval of an Amended Special Service Contract with Greater Kudo, LLC ("Customer"), three Purchased Power Agreements ("PPAs") and three Energy Storage Agreements ("ESAs") pursuant to 17.9.551 NMAC, an Amended Rate 36B, Amended Rider No. 47 and Amended Rider No. 49. The additional documents submitted in support of the Application include the following:

- Executive Summary;
- Application;
- Tables showing where each PPA Rule requirement is addressed in testimony;
- Proposed form of customer notice;
- Advice Notice No. 645, including the Table of Contents – 6th Revised Rate 36B, 3rd Revised Rider No. 47 and 1st Revised Rider No. 49; and
- Direct Testimony and Exhibits of Julio C. Aguirre, Gary B. Barnard, Thomas P. Duane, Stephen Jenkins, Michael J. Settlage.

PNM's Application requests the New Mexico Public Regulation Commission ("NMPRC" or "Commission") approve three 20-year term PPAs for a combined total of 290 MW of solar energy from three facilities, three 20-year term ESAs that are co-located respectively with the three solar facilities with a combined total of 268 MW of four-hour battery storage compacity. Pursuant to the Second Amended and Restated Special Service Contract ("SSC") approved originally by the Commission in Case No. 16-00191-UT and as amended, in Case No. 18-00269-UT the Customer will pay the costs associated with these resources. The SSC requires PNM to procure sufficient

renewable energy resources to meet Customer's load at the Data Center in Los Lunas, New Mexico, and provides that PNM shall recover from Customer the costs of these additional resources such that there will be No Net Adverse Impact (as defined in the SSC) to PNM's other retail customers. The PPAs and ESAs PNM seeks approval of are consistent with the SSC and Commission Final Orders in Case Nos. 16-00191-UT, 18-00009-UT, 18-00269-UT and 23-00251-UT, and are therefore also in the public interest.

PNM will serve a copy of this Application and all attachments on the Attorney General, New Mexico Public Regulation Commission Staff, and all counsel of record and parties pro se in PNM's last rate case (Case No. 24-00089-UT) and PNM's last PPA application for Customer (Case No. 23-00251-UT). All notices, pleadings, documents, and other communications regarding this filing should be sent to the following individuals:

Stacey J. Goodwin
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This application is being electronically filed, and a copy of the check for the filing fee is included. A check in the amount of $25.00 for the filing fee for this application will be mailed to the NMPRC.

If you have any questions or require additional information regarding this Application, please call me at (505) 241-4628.

Respectfully submitted,

*/s/Lisa Contreras*
Lisa Contreras
Senior Project Manager, Regulatory Policy and Case Management

cc: Certificate of Service

*GCG#533854*

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**NMPRC CASE NO. 25-00048-UT**
**EXECUTIVE SUMMARY**

PNM is requesting approval for additional renewable energy resources to support the ongoing expansion load of the Greater Kudo LLC ("Customer") for Meta's Data Center near Los Lunas, New Mexico.

**Renewable Energy Resources**

PNM requests approval for the following resource additions to meet the additional Customer load. Approval of these resources is necessary to ensure PNM meets its Special Service Contract ("SSC") contractual obligations to provide sufficient renewable energy to meet the Customer's Data Center load. These resources include:

- three 20-year Purchase Power Agreements ("PPAs") for 290 MW total of solar resources; and
- three 20-year Energy Storage Agreements ("ESAs") for approximately 268 MW total of four-hour batter energy storage systems.

PNM's application seeks approval of these additional resources pursuant to 17.9.551 NMAC, which outlines the requirements for filing an application for approval of long-term PPAs and ESAs. Costs for the PPAs and ESAs will be paid by the Customer as required by the SSC.

**An Amended Special Service Contract**

Additionally, PNM also requests approval for a Third Amended and Restated SSC, updates to the Special Service Rate – Renewable Energy Resources ("Rate No. 36B"), the Green Energy Rider ("Rider No. 47") and the Production Cost Allocation Rider ("Rider No. 49").

- The amendments to the SSC are needed to accommodate the additional renewable energy resources and battery storage facilities, including pricing terms of incremental resources, contractual obligations arising from the operation and dispatch of the resources, and to incorporate revised language to clarify the cost allocation process to ensure No Net Adverse Impact to PNM's other retail customers. Specifically, this includes clarifying, but not changing, the methodology for the contribution to production calculation.
- Updates to Rate No. 36B are non-substantive changes to clarify qualification language for the rate.
- Updates to Rider Nos. 47 and 49 are to more accurately reflect eligibility items and contribution to production.

**In The Public Interest**

Since the New Mexico Public Regulation Commission's initial approval of the special service contract in Case No. 16-00191-UT, the special service contract has provided a number of net

benefits to PNM's customers and the New Mexico economy, including this expansion of the data center which is projected to approximate $2.5 billion of total investment in construction equipment, an estimate of over 1,100 skilled trade workers on site daily during peak construction and ongoing phases of buildout, and over 400 direct operational jobs following completion. This will also result in a total of more than $5 million in direct grant funding to over 115 Valencia County area schools and nonprofits since 2019.

The Customer participates in a voluntary renewable energy resources program under the Renewable Energy Act, and through that program, PNM is committed to matching one hundred percent of the Customer's energy consumption on an annual basis with renewable energy resources paid for by the Customer so that there is No Net Adverse Impact on other retail customers.

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

| | | |
|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SEVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO. 47 AND AMENDED RIDER NO. 49** | ) | **Case No. 25-00048-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO,** | ) | |
| **Applicant.** | ) | |

**PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDO, LLC, THREE PURCHASED POWER AGREEMENTS, AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AN AMENDED RATE NO. 36B, AMENDED RIDER NO. 47 AND AMENDED RIDER NO. 49**

Public Service Company of New Mexico ("PNM") hereby applies to the New Mexico Public Regulation Commission ("Commission") pursuant to 17.9.551 NMAC ("Rule 551") for approval of the following:

1) The Third Amended and Restated Special Service Contract ("Restated SSC") between PNM and Greater Kudu LLC ("Customer"), which reflects modifications to the Second Amended and Restated Special Service Contract ("Current SSC") that was approved by the Commission in Case No. 18-00269-UT;
2) Three purchased power agreements ("PPA") for a combined total of 290 MW of solar energy from the three facilities;
3) Three energy storage agreements ("ESA") that are co-located respectively with the three solar facilities above with a combined total of 268 MW of four-hour battery storage capacity;

4) Non-substantive changes to Rate No. 36B;

5) Clerical changes in Rider No. 47 to align the tariff language and incorporate the term SSC Energy Resources and SSC Storage Resource as defined in the Restated SSC; and

6) Changes to Rider No. 49 to provide clarity to the calculation of the Contribution to Production Component true-up mechanism while incorporating language addressing the effects of the capacity contributions resulting from the proposed SSC Storage Resources included in this Application.

As in the Current SSC, the Restated SSC allows the Customer to direct PNM to procure sufficient renewable energy resources to meet the load at Customer's data center in Los Lunas, New Mexico ("Data Center").[1] The Customer participates in a voluntary renewable program under the Renewable Energy Act ("REA").[2] Through that program, and as described in the Restated SSC, PNM is committed to matching one hundred percent of the Customer's energy consumption on an annual basis with new renewable energy resources that will be paid for by the Customer. The energy and capacity provided by the proposed PPAs and ESAs are necessary for PNM to fulfil its obligation to meet the expanding electric service requirements of the Data Center. PNM proposes to recover the costs of the PPAs and ESAs directly from the Customer through Rider No. 47, the Green Energy Rider, as provided at Section 5.1 of the Restated SSC.

The Commission approved the initial special service contract between PNM and the Customer as well as initial PPAs to serve the Customer in Case No. 16-00191-UT. In its Final Order in Case No. 16-00191-UT, the Commission found that, viewing the transaction as a whole,

[1] Restated SSC at § 3.1.
[2] NMSA 1978, § 62-16-7(B) (2019).

PNM's application provided a number of net benefits to PNM's customers and the New Mexico economy, was in the public interest, and should be approved. The Commission's approvals in that case were a key factor in the Customer's decision to locate the Data Center in New Mexico. The Commission subsequently approved Additional Renewable Energy Procurements in Case Nos. 18-0009-UT, 18-00269-UT, 21-00031-UT, and 23-00251-UT and approved amendments to the original special service contract in Case No. 18-00269-UT.

As the needs of the Customer continue to evolve, PNM is aware that changes are necessary to accommodate additional renewable energy resources and battery storage facilities, including pricing terms of the incremental resources, contractual obligations arising from the operation and dispatch of the resources, and to incorporate revised language to clarify the determination of No Net Adverse Impact to other retail customers.

In 2024, the Customer notified PNM that it needs additional renewable energy to support the ongoing expansion of its Data Center, as anticipated in the Restated SSC. PNM and the Customer worked together to identify and evaluate the proposed PPAs and ESAs as required by the Second Amended and Restated Special Service Contract ("Current SSC") and have determined that the proposed resources provide sufficient energy and capacity to meet the expanded load.

It is important to receive all approvals requested in this Application by December 31, 2025, to help PNM serve the expanding load of the Data Center buildings currently under construction. PNM respectfully requests the Commission's approval of this Application on or before December 31, 2025.

In further support of its Application, PNM states the following:

## I. BACKGROUND

1. PNM is an investor-owned New Mexico corporation that owns; operates; and controls plant, property, and facilities for the generation, transmission, distribution and sale of electric energy to the public in portions of New Mexico (*i.e.,* retail services) and to purchasers for resale *(i.e.,* wholesale services). A certified copy of PNM's articles of incorporation is on file with the Commission.

2. PNM is a public utility in New Mexico, as defined in NMSA 1978, Section 62-3-3(G) and is subject to the jurisdiction and authority of the Commission.

3. PNM's principal office is located at 414 Silver Ave. SW, Albuquerque, New Mexico 87102.

4. PNM's attorneys and corporate representatives who should receive all notices, pleadings, discovery requests and responses and other documents related to this case are:

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## II. THE PPAs AND ESAs

5. PNM seeks approval of three PPAs and three ESAs:

A. The Star Light PPA and ESA. This is a hybrid solar photovoltaic generation facility with a net output of 100 MW co-located with a 100 MW 4-hr battery energy storage system ("BESS") that interconnects into the existing Sun Ranch 115 kV substation located on Interstate 25 near mile marker 200, bordering nearby Los Lunas and Belen in Valencia County. Star Light Energy Center, LLC will sell the energy output to PNM at a price of $35.87/MWh over a twenty-year term. The twenty-year term begins upon the facility's commercial operation date which is expected to be December 1, 2026. Star Light Energy Center, LLC will sell the energy storage capacity of the BESS to PNM at a price of $19.32 per available hour of energy storage per MW of capacity over a twenty-year term which begins on the expected commercial operation date of December 1, 2026.

B. The Four Mile Mesa Solar PPA and ESA. This is a solar photovoltaic generation facility with a net output of 100 MW co-located with a 100 MW 4-hr BESS interconnecting into the existing San Juan 345 kV substation located near the San Juan coal mine north of Waterflow, New Mexico in San Juan County. Four Mile Mesa Solar, LLC will sell the energy output to PNM at a price of $39.79/MWh over a twenty-year term. The twenty-year term will begin upon the facility's commercial operation date which is expected to be December 31, 2027. Four Mile Mesa Solar, LLC will sell the energy storage capacity of the BESS to PNM at a price of $21.25 per available hour of energy storage per MW of capacity over the twenty-year term which begins on the expected commercial operation date of December 31, 2027.

C. The Windy Lane Solar PPA and ESA. This is a hybrid solar photovoltaic generation facility with a net output of 90 MW co-located with a 68 MW 4-hr BESS interconnecting behind a shared point of interconnection with an existing wind generation facility known as Casa Mesa. Casa Mesa is located north of PNM 345 kV substation Taiban Mesa which is the point of interconnection for the project. Taiban Mesa is located along remote NM-252 14 miles northeast of Fort Sumner, New Mexico in De Baca County. Windy Lane Energy Center, LLC will sell the energy output to PNM at a price of $37.52/MWh over a twenty-year term. The twenty-year term will begin upon the facility's commercial operation date which is expected to be December 1, 2026. Windy Lane Energy Center, LLC will sell the energy storage capacity of the BESS to PNM at a price of $19.91 per available hour of energy storage per MW of capacity over a twenty-year term which begins on the commercial operation date expected to be December 1, 2026.

6. Pursuant to the Current SSC, PNM and the Customer are required to work collaboratively, expeditiously, and in good faith to: (1) determine when PNM should bring new renewable resources into service to match the Data Center's projected load; (2) identify and evaluate the costs and benefits of new renewable resources available to meet that load; and (3) determine the location(s) of those Additional Renewable Energy Procurements to avoid constraints on PNM's transmission system.[3] As required, PNM and Customer have collaborated to identify the agreements and renewable energy and storage facilities described above to meet the Customer's energy needs at pricing and terms acceptable to Customer and consistent with PNM's operational requirements. Similar requirements are carried forward in the Restated SSC.[4]

[3] SSC at § 3.1.3.
[4] Restated SSC at § 3.4.

7. Construction of the facilities that will provide energy and capacity under the PPAs and ESAs will provide significant economic benefits to New Mexico. The Data Center, including the ongoing expansion, is estimated to have resulted in approximately $2.5 billion of total investment in construction and equipment to-date, an estimate of over 1,100 skilled trade workers on site daily during peak construction of the past and on-going phases of buildout, and over 400 direct operational jobs following construction completion. Further, the Customer has provided a total of more than $5 million in direct grant funding to over 115 Valencia County area schools and nonprofits since 2019.

## III. RULE 551

8. Rule 551.8 provides that no electric utility may become irrevocably obligated as a purchaser under a long term purchased power agreement ("LTPPA") without first obtaining the Commission's written approval. An LTPPA is a PPA or ESA with a term of five years or more, inclusive of the base term and any extensions, for which the utility intends to seek rate recovery from New Mexico retail customers, excluding agreements required to be approved under the REA and PPAs with Qualifying Facilities ("QF") pursuant to 17.9.570 NMAC. Because the PPAs and ESAs PNM proposes here are for terms of more than five years and are not subject to the REA or with a QF pursuant to 17.9.570 NMAC, PNM is obligated to obtain Commission approval before becoming irrevocably bound under them.

9. The Commission may approve the Application without a hearing sixty days after notice is provided if no protest is filed. 17.9.551.10(A) NMAC. Under Rule 551, the Commission must issue a final order no later than six months from the date PNM files its Application. 17.9.551.10(B) NMAC. The PPAs and ESAs include provisions (Section 17.3 of each agreement)

allowing termination of the agreements should the Commission not issue an order on this Application by December 31, 2025, the "Regulatory End Date."

10. PNM requests that the Commission issue a final order approving the Application without a formal hearing provided no protest is filed within 60 days after the date notice is given, consistent with 17.9.551.10(A) NMAC. If a protest is filed and the Commission determines that the protest demonstrates a public hearing is necessary, PNM requests that the hearing be scheduled so a final order can be issued by no later than December 31, 2025, the Regulatory End Date as specified in the PPAs and ESAs.

11. Rule 17.9.551.8(D) NMAC imposes clear evidentiary requirements for approval of a LTPPA, including a copy of the LTPPA, explanation of the key terms, and description of the benefits of entering into the LTPPA. The testimony and exhibits submitted in support of this Application satisfy all requirements under Rule 551.

12. Pursuant to 17.9.551.9 NMAC, the Commission may authorize ratemaking treatment for LTPPAs. The PPAs and ESAs proposed here are necessary for, and will be utilized by, PNM to provide service to the Customer pursuant to the terms, conditions, and cost recovery provisions of the Restated SSC. PNM will recover the PPA and ESA costs directly from the Customer through Rider No. 47, as provided in the Restated SSC.

13. In Case No. 15-00083-UT the Commission held that the review and approval procedure for a LTPPA is similar to the review and approval procedure for a Certificate of Public Convenience and Necessity, pursuant to NMSA 1978, Section 62-9-1, and that a utility must demonstrate by a preponderance of the evidence that its proposed LTPPA complies with Rule 551

and is in the public interest.[5] The proposed PPAs and ESAs are in the public interest because they are consistent with the Final Order in Case Nos. 16-00191-UT, 18-00009-UT, 18-00269-UT and 23-00251-UT as well as with the No Net Adverse Impact requirement in the Restated SSC.[6] The agreements will provide additional economic and environmental benefits to the state through the injection of funds through construction and operation as well as additional renewable resources for PNM's portfolio.

## IV. THE SPECIAL SERVICE CONTRACT

14. First approved in Case No. 16-001941-UT, the Special Service Contract controls how PNM provides electric service to the Customer. As the Customer's needs continue to evolve, the Current SSC needs amendment in order to accurately manage the relationship between PNM and the Customer.

15. The Restated SSC reflects the amendments necessary to ensure proper functioning of this relationship. It includes clarifications to the methodology in Contribution to Production calculation in order to ensure that the Customer pays its allocated share of production costs as determined in a rate case. These clarifications include updated terminology and a reflection of reduced dependence on PNM's other generation resources due to the addition of SSC Resources.

16. The Restated SSC also reflects general language updates as well as updates to clarify how resource curtailments are to be addressed.

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[5] *Recommended Decision*, pp. 18-25 (September 21, 2015), *adopted by* Final Order (October 7, 2015).
[6] No Net Adverse Impact, as defined in the Restated SSC, "means that, on balance, this Contract and the PNM tariffs described herein result in a neutral or positive impact on rates for PNM's other retail electric service customers considering all relevant benefits generated and burdens created by this Contract and those PNM tariffs as determined pursuant to Section 5.1.2 of this Contract." Restated SSC at § 1.1 and § 5.1.2.

17. These amendments also include updates to Rate No. 36B, Rider No. 47, and Rider No. 49. Changes to Rate No. 36B include updates to qualification language, charges terminology, and clarity for payments associated with curtailments. An updated Rider No. 47 reflects clearer eligibility items. Changes to Rider No. 49 more accurately describes the comparison of the values of Rider No. 47 and the Contribution to Production calculation and ultimate recovery of any potential Under-Collected production costs from the Rate No. 36B customer.

18. PNM files advice notices for changes to Rate No. 36B, Rider No. 47, and Rider No. 49 with this Application and requests that, if approved, they be suspended with an effective date of 10 days following the Final Order in this matter.

## V. PNM'S WITNESSES

19. PNM's Application is supported by the direct testimonies of five witnesses:

A. Julio C. Aguirre, PNM's Director of Pricing and Customer Strategy, introduces PNM's other witnesses, summarizes the Application and the requested approvals, provides background information on service to the Customer, explains the purpose of the PPAs and ESAs, introduces and explains the amendments to the Current SSC as presented in the Restated SSC, addresses certain requirements of Rule 551, including the potential impact on PNM's financial metrics, and explains the need for certain variances from applicable Commission rules. Mr. Aguirre also demonstrates that the PPA and ESA are in the public interest and should be approved as requested.

B. Gary B. Barnard, Executive Director of Strategic Energy Development, Renewables and Contracts for PNM, addresses most of the requirements of Rule 551. He describes the PPAs and ESAs, summarizes their key terms and conditions, and supports

the reasonableness of the agreements. He also describes the solar facilities and energy storage facilities that are the subject of each agreement.

C. Thomas P. Duane, PNM's Director of Integrated Resource Planning, addresses the Customer's expanded retail load and the additional renewable energy resources that will be procured by PNM and paid for by the Customer.

D. Stephen Jenkins, Manager of Transmission Planning Engineering for PNM, addresses interconnection and transmission matters related to the proposed PPAs and ESAs.

E. Michael Settlage, PNM's Pricing Principal, addresses the proposed changes to the existing Rate No. 36B, Rider No. 47, and Rider No. 49. Additionally, Mr. Settlage describes the proposed modifications to the Contribution to Production methodology applied to the Customer under the Restated SSC and how all these changes impact the rates and riders applied to the Customer per the terms of the Restated SSC.

20. PNM's witnesses address all requirements of Rule 551. Exhibit 1 and Exhibit 2 to this Application show where each of the Rule 551 requirements is addressed in the PNM direct testimonies.

## VI. OTHER MATTERS

21. Attached hereto as Exhibit 3 is a Proposed Form of Notice to Customers.

22. Pursuant to 17.9.551.8(C) NMAC, PNM is serving a copy of its Application on the Commission's Utility Division Staff, the New Mexico Department of Justice, and the parties to

PNM's most recent general rate case, Case No. 24-00089-UT, and the parties to the Commission's last proceeding involving the SSC, Case No. 21-00031-UT.

WHEREFORE, PNM requests that the Commission issue an order, on or before December 31, 2025, approving each PPA and each ESA as requested in the Application.

Respectfully submitted this 13th day of June 2025.

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

*/s/ Christopher Atencio*
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*Attorneys for Public Service Company of New Mexico*

*GCG #533856*

## Rule 551.8 General Requirements for Filing an Application for Approval of a PPA

| | | | | In Testimony Of | Reference |
|---|---|---|---|---|---|
| **551.8(D)** | | | An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide: | | |
| **1** | | | A copy of the LTPPA; and | Gary B. Barnard | Section I: Introduction and Purpose |
| **2** | | | An explanation of key terms and conditions of the LTPPA containing: | | |
| | **a** | | the term of the LTPPA including any options to extend the agreement; | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |
| | **b** | | the size in MW of capacity and the amount of energy in MWh or kWh per month and any conditions regarding the minimum or maximum amount of energy or capacity made available or required to be purchased; | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |
| | **c** | | the price or pricing formula under which the electric utility will pay for the power and energy contracted for, including identification of when charges begin to be incurred, any price reopeners and any price escalation provisions; | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |
| | **d** | | obligations by the electric utility to pay for any fixed or variable administrative, transactional or operation and maintenance costs incurred through the operation of the generation facility, including start-up costs, taxes, insurance, environmental or reclamation-related costs, fuel costs and any other costs that the electric utility may incur; and | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |

**Rule 551.8 General Requirements for Filing an Application for Approval of a PPA**

| | | | | In Testimony Of | Reference |
|---|---|---|---|---|---|
| **551.8(D)** | | | An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide: | | |
| | **e** | | provisions related to non-performance by the counter-party and the remedies provided. | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |
| **3** | | | a description of transmission costs the electric utility will incur or pay to receive the purchased power, which may include the costs of third-party transmission wheeling, or construction of transmission to facilitate purchases under the LTPPA or both; | Stephen Jenkins | Section II: Rule 551 Requirements |
| **4** | | | an explanation of how the electric utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers; | Julio C. Aguirre | Section IV: Required Approvals Under Rule 551 |
| **5** | | | A general description of: | | |
| | **a** | | the generating facility or facilities that will generate the purchased power; or | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |
| | **b** | | if the power is to be generated from one or more specific generating units to be constructed outside New Mexico, a description of the anticipated siting of the generating unit, expected construction time the expected commercial operation date; | Not Applicable | Not Applicable |
| | **c** | | if the power is to be generated from one or more specific generating units to be constructed within New Mexico, a description of: | | |

**Rule 551.8 General Requirements for Filing an Application for Approval of a PPA**

| | | | | In Testimony Of | Reference |
|---|---|---|---|---|---|
| **551.8(D)** | | | An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide: | | |
| | | **i** | the approvals required to construct and operate the generating unit, including air quality and other environmental permits; | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |
| | | **ii** | the expected construction time; | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |
| | | **iii** | the expected commercial operation date; | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |
| | | **iv** | the fuel type and supply sources; and | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |

**Rule 551.8 General Requirements for Filing an Application for Approval of a PPA**

| | | | | In Testimony Of | Reference |
|---|---|---|---|---|---|
| **551.8(D)** | | | An application for commission review and approval of an LTPPA shall be accompanied by supporting testimony and exhibits that provide: | | |
| | | **v** | other provisions addressing the electric utility's ownership options for the generating unit during or after the term of the agreement. | Gary B. Barnard | Section III: Purchase Power Agreements and Section IV: Energy Storage Agreements |
| **6** | | | evidence that entering into the LTPPA is consistent with the provision of safe and reliable electric utility service at the lowest reasonable cost, considering both short and long-term costs and all other relevant factors; | Thomas P Duane | Section II: Safe and Reliable Service |
| **7** | | | evidence of the LTPPA's impact on the electric utility's financial condition and financial metrics; | Julio Aguirre | Section IV: Required Approvals Under Rule 551 |
| **8** | | | evidence that the LTPPA is consistent with the electric utility's most recent commission-accepted integrated resource plan unless, as described in Section 17.7.3.10 NMAC, material changes that would warrant a different course of action by the electric utility have occurred; in which case, the testimony shall include justification for deviation from the integrated resource plan; | Thomas P Duane | Section III: Consistency with the IRP |
| **9** | | | evidence addressing whether a utility-owned generation resource could have been constructed as an alternative to the LTPPA with greater benefit to ratepayers; | Gary B. Barnard | Section II: Methodology and Selection Process |
| **10** | | | evidence addressing the methodology and criteria by which the purchased power agreement was selected; and | Gary B. Barnard | Section II: Methodology and Selection Process |
| **11** | | | any other information or evidence that the electric utility believes will assist the commission in its review of the LTPPA. | Gary B. Barnard | Section V: Other Key Provisions |

| Rule 551.9 Ratemaking Treatment For All Purchased Power Agreements | | | | | |
|---|---|---|---|---|---|
| | | | | **In Testimony Of** | **Reference** |
| **551.9(A)** | | | The following ratemaking treatment shall apply to all purchased power agreements unless otherwise expressly authorized by order of the commission: | | |
| **1** | | | Energy costs incurred under a purchase power agreement are recoverable through a fuel and purchased power cost adjustment clause ("FPPCAC") according to the provisions of the FPPCAC approved for the electric utility; and | Julio Aguirre | Section IV: Required Approvals Under Rule 551 |
| **2** | | | Capacity costs and fixed costs incurred under a purchased power agreement, as well as energy costs incurred by an electric utility without an approved FPPCAC, may be recoverable through base rates when the commission issues an order authorizing a change in base rates that includes recovery of the capacity costs and fixed costs, and energy costs in the case of an electric utility without an approved FPPCAC. | Julio Aguirre | Section IV: Required Approvals Under Rule 551 |
| **551.9(B)** | | | An electric utility may include in an application for approval of an LTPPA a request that the commission determine other ratemaking principles and treatment that will apply to the LTPPA. | Not Applicable | Not Applicable |
| | | | | | |
| | | | | | |

# NOTICE TO PNM CUSTOMERS OF PROCEEDING AND HEARING

**To customers of Public Service Company of New Mexico**:

PNM's customers are here notified of the company's June 13, 2025 application to the Public Regulation Commission (Commission) requesting approval of a purchased power agreements, energy storage agreements, and an amended special service contract between PNM and Greater Kudu LLC ("Customer"). This application has been assigned Commission Case No. 25-00___-UT.

A purchased power agreement (PPA) is a contract between a buyer and a third-party seller for the buyer to purchase electricity at an identified cost over a period of time. An energy storage agreement (ESA) is a battery-storage contract between a buyer and a third-party to allow the buyer to utilize a battery-storage system. A special service contract is an agreement between PNM and a customer to provide electric services outside the typical customer classes.

This notice:

- Describes the generation and battery facilities for which PNM seeks approval,
- Describes the amendments to the special service contract between PNM and Greater Kudu LLC,
- Describes the Commission's process for considering PNM's application, and
- Describes how you can participate in this process (if you wish to do so).

**The Commission may approve the PPAs, ESAs, and special service contract requests without a formal hearing if no protest is filed within sixty days of the publication of this notice.**

Any person who is not a party to the case or affiliated with a party may make written comment by e-mailing the Commission's records bureau at prc.records@prc.nm.gov. Written comments should reference Case No. 25-00___-UT. The Commission may also schedule one or more public comment hearings. Commenters are not parties and comments are not formal "evidence."

Any person who desires more information about the application may contact the Commission by phone at (505) 827-4084 or 1-888-427-5772 or by email at ryan.jimenez@prc.nm.gov.

**IF YOU DO NOT WANT TO PARTICIPATE IN THIS PROCESS OR COMMENT ON THE PROCEEDING OR BECOME MORE INVOLVED, THEN NO ACTION IS REQUIRED ON YOUR PART.**

PNM's June __, 2025 application seeks Commission approval under 17.9.551 NMAC for the long-term Purchase Power Agreements (PPAs) and Energy Storage Agreements (ESAs) described immediately below. PNM also seeks approval of a special

service contract between PNM and Greater Kudu LLC. PNM must receive Commission approval before becoming irrevocably bound under the agreements.

**The Star Light PPA and ESA**

This is a new, hybrid 100 MW solar photovoltaic generation facility co-located with a 100 MW 4-hr battery energy storage system ("BESS") located in Valencia County. Star Light Energy Center, LLC will sell the energy output to PNM at a price of $35.87/MWh over a 20-year term. The 20-year term begins upon the facility's commercial operation date which is expected to be December 1, 2026. Star Light Energy Center, LLC will also sell the energy storage capacity of the BESS to PNM at a price of $19.32 per available hour of energy storage per MW of capacity over a 20-year term which begins on the expected commercial operation date of December 1, 2026.

**The Four Mile Mesa Solar PPA and ESA**

This is a new, 100 MW solar photovoltaic generation facility co-located with a 100 MW 4-hr BESS located in San Juan County. Four Mile Mesa Solar, LLC will sell the energy output to PNM at a price of $39.79/MWh over a 20-year term. The 20-year term begins upon the facility's commercial operation date which is expected to be December 31, 2027. Four Mile Mesa Solar, LLC will also sell the energy storage capacity of the BESS to PNM at a price of $21.25 per available hour of energy storage per MW of capacity over the 20-year term which begins on the expected commercial operation date of December 31, 2027.

**The Windy Lane Solar PPA and ESA**

This is a new, 90 MW hybrid solar photovoltaic generation facility co-located with a 68 MW 4-hr BESS located in De Baca County. Windy Lane Energy Center, LLC will sell the energy output to PNM at a price of $37.52/MWh over a 20-year term. The 20-year term begins upon the facility's commercial operation date which is expected to be December 1, 2026. Windy Lane Energy Center, LLC will also sell the energy storage capacity of the BESS to PNM at a price of $19.91 per available hour of energy storage per MW of capacity over a 20-year term which begins on the commercial operation date expected to be December 1, 2026.

**Special Service Contract**

Current renewable resources for the Customer and the ones proposed in this matter are paid for by the Customer pursuant to a special service contract that ensures that there is No Net Adverse Impact to any of PNM's other retail customers. PNM requests approval of amendments to the special service contract to update the current methodology and language used to calculate the costs to the Customer.

Some of the procedural dates for this case are identified below. Individuals interested in these proceedings should review the procedural order issued in this case in its

entirety to obtain a complete understanding of the procedures that will govern. **The procedural order is found online at *https://www.prc.nm.gov/case-lookup-e-docket/*.** The procedural dates and requirements set out below may be changed.

Statute and commission rules provide that the Commission may approve the application without a formal hearing if no protest is filed within sixty days of the date this notice is provided to customers.

Anyone wishing to become a party to this case must file a motion for leave to intervene that conforms with 1.2.2.23(A), (B) NMAC on or before _____, _____, **2025**.

Staff shall, and any intervenor may, file direct testimony by _____, _____, **2025**.

Rebuttal testimony must be filed on or before _____, _____, **2025**.

A public hearing will be held beginning on _____, _____, **2025**, and will continue as needed through _____, _____, **2025**, beginning at 9 a.m. each day. The hearing may be conducted via the Zoom videoconferencing platform or may be conducted in person.

The procedural dates and requirements provided here are subject to further order of the Hearing Examiner or the Commission.

Interested persons desiring more information about this application may contact the Commission by phone at 1-888-427-5772 or 505-827-4084 or by e-mail at ryan.jimenez@prc.nm.gov.

**PERSONS WITH DISABILITIES**

IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPLIFIER, QUALIFIED SIGN LANGUAGE INTERPRETER, OR ANY OTHER FORM OF AUXILIARY AID OR SERVICE TO ATTEND OR PARTICIPATE IN THE HEARING, OR FOR A SUMMARY OR OTHER TYPE OF ACCESSIBLE FORMAT OF PUBLIC DOCUMENTS, PLEASE CONTACT THE DIRECTOR OF ADMINISTRATIVE SERVICES OF THE COMMISSION AT (505) 827-8019 AS SOON AS POSSIBLE PRIOR TO THE HEARING.

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**ELECTRIC SERVICES**

Advice Notice No. 645 June 13, 2025



NEW MEXICO PUBLIC REGULATION COMMISSION

Public Service Company of New Mexico hereby gives notice to the New Mexico Public Regulation Commission and to the public of the filing and publishing of the following revisions in its Rates that are attached hereto:

| RATE NUMBER | TITLE OF RATE | CANCELING RATE NUMBER | DATE EFFECTIVE |
|---|---|---|---|
| | Table of Contents | Advice Notice No. 645 | July 14, 2025 |
| 6th Revised Rate No. 36B | Special Service Rate – Renewable Energy Resources | 5th Revised Rate No. 36B | July 14, 2025 |
| 3rd Revised Rider No. 47 | Green Energy Rider | 2nd Revised Rider No. 47 | July 14, 2025 |
| 1st Revised Rider No. 49 | Production Cost Allocation Rider | Original Rider No. 49 | July 14, 2025 |

Advice Notice No. 645

/s/*Kyle T. Sanders*
Kyle T. Sanders
Vice President, PNM Regulatory

GCG #533864

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**ELECTRIC SERVICES**

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| Small Power Service | 25th Revised 2A | |
| Small Power Service Time-of-Use Rate | 25th Revised 2B | |
| General Power Service Time-of-Use Rate | 24th Revised 3B | |
| General Power Service (Low Load Factor) Time-of-Use Rate | 7th Revised 3C | |
| Municipalities and Counties General Power Service Time-Of-Use Rate | 3rd Revised 3D | |
| Municipalities and Counties General Power Service | 3rd Revised 3E | |
| Non-Residential Charging Station-Pilot | 3rd Revised 3F | |
| Large Power Service Time-of-Use Rate | 23rd Revised 4B | |
| Large Service for Customers ≥ 8,000 kW Minimum at 115kV, 69kV, 46kV or 34.5kV | 25th Revised 5B | |
| Private Area Lighting Service | 18th Revised 6 | |
| Irrigation Service | 23rd Revised 10A | |
| Irrigation Service Time-of-Use Rate | 23rd Revised 10B | |
| Water and Sewage Pumping Service Time-of-Use Rate | 22nd Revised 11B | |
| Cogeneration and Small Power Production Facilities | 55th Revised 12 | |
| Large Service for Public Universities ≥ 8,000 kW Minimum with Customer-Owned Generation Facilities Served at 115 kV | 13th Revised 15B | |
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Advice Notice No. 645

/s/ *Kyle T. Sanders*
Kyle T. Sanders
Vice President, Regulatory

*GCG#533865*

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| Palo Verde Credit Rider | Original Rider No. 59 | |


Advice Notice No. 645

/s/ *Kyle T. Sanders*
Kyle T. Sanders
Vice President, Regulatory

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**ELECTRIC SERVICES**

**6TH REVISED RATE NO. 36B**
**CANCELING 5TH REVISED RATE NO. 36B**

SPECIAL SERVICE RATE – RENEWABLE ENERGY RESOURCES



EXPLANATION OF RATE: This Special Service Rate, the companion Green Energy Rider (Rider No. 47) and the companion Production Cost Allocation Rider (Rider No. 49) are available to eligible customers who wish to have the Company acquire SSC Resources (as that term is defined in the Special Service Contract) in an amount equal to some or all of the customer's electric utility service requirements and who enter into a Special Service Contract, approved by the New Mexico Public Regulation Commission ("NMPRC"), that establishes the rates and other terms and conditions for such service. Rates covering the full cost of the renewable energy resources shall be established in the Special Service Contract pursuant to the Green Energy Rider. This Special Service Rate, along with the Production Cost Allocation Rider, prescribes the methodology that the Company and each customer will use in the Special Service Contract to establish all other charges to be paid by each customer for electric service. In each general rate proceeding, the Company will perform a separate class cost of service calculation for each Special Service Contract customer to ensure the accuracy of all charges. If the electric service requested by the customer requires the Company to extend or upgrade its transmission or other facilities, the cost of the extension or upgrade shall be paid by the customer to the extent consistent with generally accepted regulatory principles of cost causation, and shall be included in the rates set in the Special Service Contract, with adequate provisions to secure the customer's payment obligation.

Except as provided in the Special Service Contract, service will be furnished subject to the Company's Rules and Regulations and any subsequent revisions. These Rules and Regulations are available at the Company's office and are on file with the NMPRC. These Rules and Regulations are a part of this Schedule as if fully written herein.

In the event of a conflict or contradiction between the terms of the Special Service Contract and this Special Service Rate, the terms of the Special Service Contract shall control.

TERRITORY: All territory served by the Company in New Mexico.

CUSTOMER ELIGIBILITY: To be eligible for this Special Service Rate, a customer must meet all of the following conditions:

1) As of the date of commercial operation, any new customer served by this rate must not have previously received electric utility service from the Company.
2) The customer must enter into a Special Service Contract with the Company for a term that is coextensive with the customer's payment obligation for the renewable resources, and the NMPRC must approve the contract.
3) The customer must achieve a minimum demand of 10,000 kW.
4) The customer must maintain an annual load factor of at least 60%.
5) Any new customer must cause the addition of SSC Resources of 10,000 kW-A/C or more to be acquired by the Company.
6) The customer must meet all of the requirements of the Company's Green Energy Rider (Rider No. 47).

TYPE OF SERVICE: Three-phase service delivered at the Company's available transmission voltage of 115 kV or higher.

Advice Notice No. 645

*/s/ Kyle T. Sanders*
Kyle T. Sanders
Vice President, Regulatory

GCG#533858

SUBSTATION EQUIPMENT: All substation and distribution transformers, the necessary structures, voltage regulating devices, lightning arrestors, and accessory equipment required by the customer in order to utilize the Company's service at 115 kV or higher voltage shall be installed, paid for, owned, operated, and maintained by the customer.

The customer shall also provide at its expense suitable protective equipment and devices so as to protect the Company's system and service and other electric users from disturbances or faults that may occur on the customer's system or equipment.

The customer shall at all times keep each of the three phases balanced as far as practicable so as not to affect service and voltage to other customers served by the Company. The customer shall not operate any equipment in a manner which will cause voltage disturbances elsewhere on the Company's system.

MONTHLY CHARGE: The Charge for electric service provided shall be the sum of charges calculated in accordance with A, B, C, D, E, F, G and H below. On-Peak period is from 8:00am to 8:00pm Monday through Friday (60 hours per week). Off-Peak period is all times other than the On-Peak period (108 hours per week).

Individual Rates shall be calculated for Rate Elements A, B, D, E, and F for each customer taking service under this rate based on each customer's load characteristics and SSC Resource procurements made by the Company consistent with class Allocated Revenue Requirement.

(A) CUSTOMER CHARGE:

All Months:

| Customer | Customer Charge |
|---|---|
| "A" or Greater Kudu | $22,616.55 per bill |
| "B" | Placeholder for new customer |

(B) TRANSMISSION DEMAND CHARGE:

All months:

| Customer | Customer Charge |
|---|---|
| "A" or Greater Kudu | $4.68 per Billable On-Peak kW |
| "B" | Placeholder for new customer |

(C) FUEL COST ADJUSTMENT APPLIED TO SYSTEM SUPPLIED ENERGY:

During each hour when the energy from the SSC Resources, including discharge of SSC Storage Resources, acquired by PNM to meet all or part of the customer's load is less than

the customer's hourly usage, the balance of hourly energy will be supplied by other energy resources available to PNM for overall system needs. For all hourly energy supplied by PNM's other energy resources, except to the extent of curtailments of SSC Resources for which the customer is paying the fixed price for energy and RECs in the Third Party PPA as provided in Section 8.1 of the SSC, the customer will pay 100% of the fuel rates under the Company's Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC") applicable to transmission voltage customers.

(D) ENERGY RELATED NON-FUEL CHARGE FOR SYSTEM SUPPLIED ENERGY:

During each hour when the energy from the SSC Resources, including discharge of SSC Storage Resources, acquired by PNM to meet all or part of the customer's load is less than the customer's hourly usage, the balance of hourly energy will be supplied by other energy resources available to PNM for overall system needs. For all hourly energy supplied by PNM's other energy resources, except to the extent of curtailments of SSC Resources for which the customer is paying the fixed price for energy and RECs in the Third Party PPA as provided in Section 8.1 of the SSC, the following energy related non-fuel charge is applicable.

Energy Related Non-Fuel Charge:

| **Customer** | **Customer Charge** |
|---|---|
| "A" or Greater Kudu | $0.0253634 per kWh |
| "B" | Placeholder for new customer |

(E) CONTRIBUTION TO PRODUCTION COMPONENT:

All months:

| **Customer** | **Customer Charge** |
|---|---|
| "A" or Greater Kudu | $X.XX per Billable On-Peak kW |
| "B" | Placeholder for new customer |

(F) GREEN ENERGY RIDER CHARGE:

Pursuant to the Green Energy Rider No. 47, the customer will be responsible for all costs associated with SSC Resources procured to meet all or part of the customer's load.

(G) OTHER APPLICABLE RIDERS:

Rider No. 36 – Renewable Energy Rider, and all other applicable rate riders shall be billed to the customer in accordance with the terms of the riders, and consistent with applicable statutes and NMPRC rules. Rider No. 16 -- the Energy Efficiency Rider shall not be applicable.

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**ELECTRIC SERVICES**

**6TH REVISED RATE NO. 36B**
**CANCELING 5TH REVISED RATE NO. 36B**

SPECIAL SERVICE RATE – RENEWABLE ENERGY RESOURCES



(H) SPECIAL TAX AND ASSESSMENT ADJUSTMENT:

Billings under this Schedule may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the Company and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

DETERMINATION OF MONTHLY ON-PEAK BILLABLE DEMAND: The monthly on-peak billable demand shall be as determined by appropriate measurement as defined by the Company, but in no event shall it be less than the highest of the following: (a) the actual highest On-Peak metered demand registered during the current month, or (b) 10,000 kW. On-Peak period is from 8:00am to 8:00pm Monday through Friday (60 hours per week). Off-Peak period is all times other than the On-Peak period (108 hours per week).

INTERRUPTION OF SERVICE: The Company will use reasonable diligence to furnish a regular and uninterrupted supply of energy. However, interruptions or partial interruptions may occur or service may be curtailed, become irregular, or fail as a result of circumstances beyond the control of the Company, or are the results of acts of public enemies, accidents, strikes, legal processes, governmental restrictions, fuel shortages, breakdown or damages to generation, transmission, or distribution facilities of the Company, repairs or changes in the Company's generation, transmission, or distribution facilities, and in any such case the Company will not be liable for damages. Customers whose reliability requirements exceed these normally provided should advise the Company and contract for additional facilities and increased reliability as may be required. The Company will not, under any circumstances, contract to provide 100 percent reliability.

ACCESSIBILITY: Equipment used to provide electric service must be physically accessible. The metering must be installed on each service location at a point accessible to Company personnel at any time.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

LIMITATION OF RATE: Electric service under this Schedule shall not be resold or shared with others.

Advice Notice No. 645

*/s/ Kyle T. Sanders*
Kyle T. Sanders
Vice President, Regulatory

GCG#533858

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**ELECTRIC SERVICES**

**3RD REVISED RIDER NO. 47**
**CANCELLING 2ND RIDER NO. 47**

GREEN ENERGY RIDER



EXPLANATION OF RATE: This Green Energy Rider ("Rider") is available to eligible customers who wish to have the Company acquire SSC Resources (as that term is defined in the Special Service Contract) in an amount equal to some or all of the customer's electric utility usage requirements and who enter into a Special Service Contract, approved by the New Mexico Public Regulation Commission ("NMPRC"), that establishes the rates and other terms and conditions for such service. The Special Service Contract shall establish rates, pursuant to the methodology described in this Rider, that cover the Company's entire cost of the SSC Resources for the term of the Special Service Contract, with adequate provisions to secure the customer's payment obligation. The Alternative Capacity Projects that can serve the customer's needs must be acceptable to the customer and PNM.

Except as provided in the Special Service Contract, service will be furnished subject to the Company's Rules and Regulations and any subsequent revisions. These Rules and Regulations are available at the Company's office and are on file with the NMPRC. These Rules and Regulations are a part of this Schedule as if fully written herein.

In the event of a conflict or contradiction between the terms of the Special Service Contract and this Green Energy Rider, the terms of the Special Service Contract shall control.

TERRITORY: All territory served by the Company in New Mexico.

CUSTOMER ELIGIBILITY: To be eligible to take service under this Rider, a customer must meet all of the following conditions:

1) As of the date of commercial operation, any new customer served by this rider must not have previously received electric utility service from the Company.
2) The customer must enter into a Special Service Contract with the Company for a term that is coextensive with the customer's payment obligation for the renewable resources and Alternative Capacity Projects, and the NMPRC must approve the contract.
3) The customer must achieve a minimum demand of 10,000 kW.
4) Any new customer must cause the addition of SSC Resources of 10,000 kW-AC or more to be acquired by the Company.
5) The customer must maintain an annual load factor of at least 60%.
6) The customer must meet all of the requirements of Rate No. 36B.

The SSC Resources acquired for the customer that are interconnected to the PNM transmission or distribution system must adhere to the requirements governed by the Federal Energy Regulatory Commission (FERC) generation interconnection process as outlined in PNM's Open Access Transmission Service Tariff (OATT). The interconnection process, among other things, involves the study of the impacts of the generation facility to ensure that the proposed interconnection will not adversely affect PNM's system and the service to existing customers. The study may also identify upgrades to the PNM transmission or distribution system that may be required to accommodate the energy injection from the generation facility. Separate arrangements that are required to secure transmission service for the delivery of energy from the renewable resources are also governed by PNM's OATT.

Advice Notice No. 645

*/s/ Kyle T. Sanders*
Vice President, Regulatory

*GCG#533857*

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**ELECTRIC SERVICES**

**3RD REVISED RIDER NO. 47**
**CANCELLING 2ND RIDER NO. 47**

GREEN ENERGY RIDER



RATE METHODOLOGY: The rates established in the Special Service Contract for service under this Green Energy Rider shall be consistent with the following:

1) If PNM acquires the SSC Resources through a purchased power agreement ("PPA"), energy storage agreement ("ESA"), or similar third-party agreement, the customer shall pay PNM the full cost of the agreement (except as otherwise provided in the Special Service Contract) in periodic, typically monthly, payments that coincide with PNM's payment obligation under the PPA.

2) If the SSC Resources are owned by PNM, the customer shall pay PNM monthly rates based on the Company's full cost of service revenue requirement for those SSC Resources, including a return on the investment equal to the Company's weighted average cost of capital, and operation and maintenance expenses, including fuel, or such other pricing structure as may be proposed by PNM and approved by the NMPRC that will fully reimburse PNM for the full cost of the SSC Resources. The initial revenue requirement shall be based on the cost of service used to set rates in PNM's most recent rate case and shall be adjusted, as necessary, in future rate cases.

3) PNM shall provide to the Customer an Excess Energy Production Credit in accordance with terms described in the Customer's Special Service Contract.

TAX ADJUSTMENT: Billings under this Rider may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the Company and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

LIMITATION OF RATE: Electric service under this Schedule shall not be resold or shared with others.

Advice Notice No. 645

*/s/ Kyle T. Sanders*
Vice President, Regulatory

*GCG#533857*

PUBLIC SERVICE COMPANY OF NEW MEXICO
ELECTRIC SERVICES

1st REVISED RIDER NO. 49
CANCELING ORIGINAL RIDER NO. 49

PRODUCTION COST ALLOCATION RIDER



EXPLANATION OF RIDER: The purpose of the Production Cost Allocation Rider ("Rider") is to provide for recovery of under-collected production costs from an applicable customer pursuant to the terms and conditions of the Special Service Contract. An under-collection of the customer's allocated production costs will be deemed to occur if the Actual Production Revenue Requirement Offset resulting from the SSC Resources serving the customer, during the Test Period of a general rate case, is less than the Production Revenue Requirement upon which rates had previously been set.

The Special Service Contract with the customer shall establish a methodology to determine the customer's Contribution to Production Component. Except as provided in the Special Service Contract, service will be furnished subject to the Company's Rules and Regulations and any subsequent revisions. These Rules and Regulations are available at the Company's office and are on file with the NMPRC. These Rules and Regulations are a part of this Schedule as if fully written herein.

TERRITORY: All territory served by the Company in New Mexico.

APPLICABILITY: This Rider shall apply to all customers taking service under Rate No. 36B – Special Service Rate, and Rider No. 47 – Green Energy Rider.

DEFINITIONS: The following definitions shall apply to this Rider:

CP Peak Hours: Coincident peak periods proposed in the Company's general rate case for class allocations based on anticipated highest demand hours.

Coincident Peak Production: The sum of coincident peak production for all SSC Resources that were used in a PNM general rate case utilizing the methodology set forth in the Special Service Contract.

Deemed Under-Allocation: Quantification of the total Test Period under-allocation and resulting under-collection of production costs for the period starting with the first date of the Test Period from the Company's last rate case and ending with the effective date of new base rates in the subsequent Company's rate case filing.

Reset Rate: Deemed under- allocation of production costs as defined in the Special Service Contract divided by 12 months and applied monthly to the Customer's bill ($/month).

Interim Period Charge: has the meaning set forth below in the Rate Methodology Section.

SSC Resource: means any energy generation or storage, or capacity, resource contracted with by PNM on Customer's behalf pursuant to the Special Service Contract.

Advice Notice No. 645

*/s/ Kyle T. Sanders*
Kyle T. Sanders
Vice President, Regulatory

GCG#533863

Stipulated Capacity Value Factor: The effective capacity value for any particular SSC Energy Resource stipulated between the Company and the Customer within the Special Service Contract to be used in a Company rate case in lieu of historical hourly production data.

RATE METHODOLOGY: The Rates established under this rider have two components. The first rate component is the Reset Rate. It is ongoing and collects any under allocation determined in the previous rate case. This rate component will remain in effect from the time this rider goes into effect until the effective date of a subsequent rate case where the base rates are reset.

The second component is the Interim Period Charge. It is limited to collect any deemed under allocation experienced from the effective date of the base rates approved in the last rate case through the effective date of this Rider. This rate component will remain in effect for 6 months beginning at the effective date of this Rider.

The two rate components under this Rider shall be established as follows:

1) For the Reset Rate, within four months of the end of the Test Period in a general rate case, the Company will compare the Production Revenue Requirement as approved in the last rate case to the Production Revenue Requirement Offset. For this comparison, the Production Revenue Requirement Offset will be based on actual production in the Test Period for all of the SSC Energy Resources (except for adjustments to be made due to curtailments of SSC Resources where PNM owes compensation to the seller under the respective Third Party PPA as provided for in Section 8 of the SSC), that used a Stipulated Capacity Value as applicable. For all other SSC Energy Resources that have been in service for at least three years as of the date of the filing of the last rate case, PNM will use the same historical average energy production as projected in the last rate case. For SSC Storage Resources, the company will use the same SSC Storage Resource Capacity Value Factor as previously agreed by the Parties for each respective SSC Storage Resource per the terms of the Special Service Contract. If the Production Revenue Requirement Offset as calculated above is less than the Production Revenue Requirement approved in the last rate case, an under-allocation of production costs to the customer will be deemed to occur.

Any Deemed Under-allocation will be calculated for the applicable Test Period on an annual basis and recovered through this Rider in equal monthly amounts until reset to zero upon the effective date of new base rates in the Company's next rate case filing.

2) The Interim Period Charge will be based on any deemed under-allocation covering the period between the end of the Test Period and the effective date of the Reset Rate. The Company will bill the Customer and recover this under collection amount as an additional charge included in the Reset Rate, within 6 months of the effective date of such Reset Rate in equal monthly payments, including a carrying charge for any deemed under collection accrued on a monthly



*/s/ Kyle T. Sanders*
Kyle T. Sanders
Vice President, Regulatory

basis equal to the then-current customer deposit rate.

3) Any revenues collected from the Customer due to the Deemed Under-Collection, including the Reset Rate and the Interim Period Charge will be booked to a regulatory liability and shall be returned to the Company's retail customers in the next general rate case where ratemaking treatment shall be determined by the Commission.

TAX ADJUSTMENT: Billings under this Rider may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the Company and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

LIMITATION OF RATE: Electric service under this Schedule shall not be resold or shared with others.

Advice Notice No. 645

*/s/ Kyle T. Sanders*
Kyle T. Sanders
Vice President, Regulatory

GCG#533863

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

| | | |
|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO. 47 AND AMENDED RIDER NO. 49** | ) | **Case No. 25-00048-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO,** | ) | |
| **Applicant.** | ) | |

**DIRECT TESTIMONY**

**OF**

**JULIO C. AGUIRRE**

**June 13, 2025**

**NMPRC CASE NO.25-00_____-UT**
**INDEX TO THE DIRECT TESTIMONY OF JULIO C. AGUIRRE**

**WITNESS FOR**
**PUBLIC SERVICE COMPANY OF NEW MEXICO**


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AFFIDAVIT

**DIRECT TESTIMONY OF**
**JULIO C. AGUIRRE**
**NMPRC CASE NO. 25-00___-UT**

## I. INTRODUCTION AND PURPOSE

**Q. Please state your name, title, and business address.**

A. My name is Julio C. Aguirre. I am the Director, Pricing Customer Strategy, for Public Service Company of New Mexico ("PNM" or "Company"). My business address is 414 Silver Avenue SW, Albuquerque, New Mexico 87102.

**Q. Please summarize your educational and professional qualifications.**

A. PNM Exhibit JCA-1 describes my educational and professional qualifications.

**Q. Please describe the responsibilities of the Pricing and Customer Strategy department.**

A. The Pricing and Customer Strategy Department is responsible for designing and implementing effective pricing strategies that result in electric offerings that strive to provide customers with accurate price signals and that align with regulatory requirements while reflecting the Company's market and financial goals. As part of its role in the Company, my team is responsible for the preparation of PNM's retail class cost of service ("COS") studies, the retail rate design of new or revised proposed tariffs in the Company's jurisdiction, as well as performing the load research function.

**Q. Have you previously testified before the New Mexico Public Regulation Commission ("NMPRC" or "Commission")?**

**A.** Yes, PNM Exhibit JCA-1 also lists the cases in which I have testified before the Commission.

**Q. What is the purpose of your Direct Testimony?**

**A.** The purpose of my testimony is to provide an overview of PNM's requests in this case, which seeks the approval of additional renewable energy procurements to meet the expanded energy requirements of Greater Kudu, LLC ("Customer") for Meta's data center near Los Lunas, New Mexico ("Data Center") and approval of amendments to the special service contract[1].

In support of PNM's application, my testimony:

1) Introduces PNM's other witnesses in this case;
2) Describes PNM's Application and the requested approvals;
3) Provides background information on service to the Customer and explains the purpose of the Purchased Power Agreements ("PPAs"), the Energy Storage Agreements ("ESAs"), and an amended Special Service Contract ("SSC") between PNM and the Customer;
4) Addresses certain requirements of Rule 551, pertaining to prior approval of PPAs and ESAs, and demonstrates that the PPAs, ESAs and Restated SSC (defined below) meet the Commission criteria for approval, are in the public interest, and should be approved;
5) Explains the need for certain variances from applicable NMPRC rules;

[1] Second Amended and Restated Special Service Contract between Public Service Company of New Mexico and Greater Kudu LLC, dated August 21, 2018 and approved in Case No. 18-00269-UT.

6) Demonstrates that PNM's requested approvals are in the public interest; and

7) Discusses other considerations related to approval of PNM's application.

**Q. Are you presenting any exhibits besides PNM Exhibit JAC-1?**

**A.** Yes. I am presenting a copy of the Third Amended and Restated Special Service Contract ("Restated SSC") between PNM and the Customer as PNM Exhibit JCA-2. The current Second Amended Special Service Contract ("Current SSC") was approved in Case No. 18-00269-UT. I am providing the Restated SSC here as part of PNM's request for approval and for reference purposes because my testimony and the testimony of other PNM witnesses refer to different sections of this document. Capitalized terms not defined in my testimony are defined in the Restated SSC. I am also presenting, as PNM Exhibit JCA-3, a comparison (redline) of the Current SSC and the Restated SSC for convenience. Finally, I am presenting PNM Exhibit JCA-4, which contains a letter to PNM from the Customer briefly describing the economic benefits to the State of New Mexico attributable to the Customer's decision to locate the Data Center in the state, as well as the economic benefits expected from the Data Center's potential expansion and the approval of the proposed renewable energy and energy storage projects proposed in this case.

**Q. Why is PNM filing this case?**

**A.** The Customer has notified PNM about the expansion of its Data Center operations, with electricity demand expected to exceed the current SSC Resource capacity. The timely procurement and development of additional renewable and storage resources are necessary to meet these needs and to comply with the Customer's sustainability

commitments as well as to maintain adequate planning and operating reserves on PNM's system. More specifically, PNM is filing this case to seek approval of three additional PPAs totaling a nameplate capacity of 290 MW of renewable energy (i.e., solar) as well as three additional ESAs, totaling a nameplate capacity of 268 MW of 4-hour battery storage, which will enable PNM to meet the growing energy and capacity needs of the Customer's Data Center, who has stated a carbon neutrality corporate goal by powering its operations in New Mexico with 100% renewable energy.

**Q. Is PNM's filing consistent with PNM's prior sought and granted approvals?**

**A.** Yes. This filing follows the same foundational framework previously granted to serve the Customer, which is one of PNM's larger commercial customers. In previous cases, the Commission approved the Current SSC, and other associated PPAs and battery storage projects, as well as a cost allocation and recovery mechanism to enable the Customer's Data Center to be supported by renewable energy in a manner that protects other customers. This filing represents a logical continuation and expansion of that framework to accommodate the Customer's projected increased load and their commitment to sustainability. Meeting this request furthers the state's policy objectives of both a transition to a carbon-free portfolio and economic development. Furthermore, to ensure other customers continue to receive safe, reliable, and cost-effective electric service, PNM and the Customer have incorporated resources and a specific pricing structure to ensure

other customers are not adversely impacted and the addition of these resources is in the public interest.

**Q. Why is PNM requesting approval of the Restated SSC at this time?**

**A.** The proposed changes to the Current SSC are necessary to accommodate the addition of renewable energy resources and battery storage facilities, including but not limited to the pricing terms of the incremental resources, contractual obligations arising from the operation and dispatch of the resources. The changes are also necessary to accommodate the load growth for the Data Center, coupled with additional battery resources that provide the required capacity to maintain the system resource adequacy, as explained in more detail by PNM Witness Duane. In addition, PNM proposes to incorporate revised language to clarify the cost allocation process that has been followed by PNM and approved by the Commission, to ensure there is not an adverse impact on other customers.

**Q. Does the Customer's need for additional renewable energy and capacity from PNM under the SSC anticipate any regulatory deadlines?**

**A.** Yes. PNM and the Customer request the Commission's approval of the present application on or before December 31, 2025, in order to meet the projected commercial operation dates for all the SSC Resources as outlined in the Direct Testimony of PNM Witness Barnard. PNM believes there is a sufficient review period for the Application in light of the review and approval process by the Commission for previous amendments to the Restated SSC. The requested approvals in this case are consistent with, and an extension of, those prior

approvals. The approvals of the Restated SSC and the amended tariffs sought in this Application ensure that PNM's procurement of the additional resources described in the proposed PPAs and ESAs will result in No Net Adverse Impact to any of PNM's other retail customers; and, therefore, the interests of PNM's other retail service customers will continue to be protected.

**Q. Please identify PNM's other witnesses who are providing direct testimony in this case.**

**A.** The other witnesses who have filed testimony in support of this Application are:

- Gary Barnard, Executive Director of Strategic Energy Development, Renewables and Contracts for PNM, will address certain requirements of Rule 551 not addressed in my testimony to provide specific information regarding the PPAs and ESAs that are the subject of this application, and support the reasonableness of the terms and conditions of these agreements.
- Thomas P. Duane, PNM's Director of Integrated Resource Planning will address matters associated with the Customer's expanded retail load and the additional renewable energy and storage resources that will be procured by PNM and paid for by the Customer.
- Stephen Jenkins, Manager of Transmission Planning for PNM, will address interconnection and transmission matters related to the proposed PPAs and ESAs.
- Michael Settlage, Pricing Principal for PNM, will address the proposed changes to the existing Rate No. 36B, Rider No. 47, and Rider No. 49.

Furthermore, he describes the proposed modifications to the Contribution to Production ("CTP") methodology applied to the Customer under the Restated SSC and how all these changes impact the rates and riders applied to the Customer per the terms of the Restated SSC. Additionally, Mr. Settlage addresses how the proposed tariffs will result in No Net Adverse Impact to other PNM customers.

## II. SUMMARY OF THE APPLICATION

**Q. What approvals is PNM seeking in this proceeding?**

**A.** PNM requests the approval of the following:

1) pursuant to 17.9.551 NMAC ("Rule 551"), three PPAs as follows:
    a. a 20-year agreement for 100 MW of solar energy from the Four-Mile Mesa facility ("Four-Mile Mesa PPA");
    b. a 20-year agreement for 100 MW of solar energy from the Star Light Energy Center facility ("Star Light PPA"); and
    c. a 20-year agreement for 90 MW of solar energy from the Windy Lane Solar facility ("Windy Lane PPA").

Collectively, along with other renewable energy resources, these are referred to in the Restated SSC as SSC Energy Resources.

2) three energy storage agreements ("ESAs"), as follows:
    a. 100 MW of four-hour energy capacity (400 MWh) from the Four-Mile Mesa facility ("Four-Mile Mesa ESA") over a 20-year term;

b. 100 MW of four-hour energy capacity (400 MWh) from the Star Light Energy Center facility ("Star Light ESA"), over a 20-year term; and

c. 68 MW of four-hour energy capacity (272 MWh) from the Windy Lane Solar facility ("Windy Lane ESA").

Collectively, along with other battery storage resources, these are referred to in the Restated SSC as SSC Storage Resources.

3) the Restated SSC, which is an Addendum to the Second Amended and Restated Special Service Contract approved in Case No. 18-00269-UT between PNM and the Customer.

4) Sixth Revised Rate No. 36B, Special Service Rate – Renewable Energy Resources ("Rate No. 36B").

5) Third Revised Rider No. 47, Green Energy Rider ("Rider No. 47").

6) First Revised Rider No. 49, Production Cost Allocation Rider ("Rider No. 49").

7) A variance from 17.1.210.12(B) NMAC and PNM's 2nd Revised Rule No. 4 C, which require special service contracts to reflect that they may be subject to change by the Commission.

8) A variance from 17.1.2.10(B)(2)(b) NMAC, which requires a comparison of proposed new rates with present rates, which is unnecessary and inapplicable because the Restated SSC and the amendments to Rate No. 36B, Rider No. 47 and Rider No. 49 are not changing any present rates.

9) A variance from the minimum data requirements established by Rule 530, which are appropriate for a general rate case but are unnecessary in this Application because it will provide no additional information useful for evaluation of the approvals sought herein.

**Q. Are there any proposed changes in the Restated SSC that modify the methodology currently used to recover the costs incurred to serve the Customer?**

**A.** No. The changes proposed in this case do not modify the existing cost recovery mechanisms approved in the previous amendment to the Restated SSC, and thus, the Customer will continue to be responsible for 100% of the contract costs of the PPAs and ESAs, which are paid and will continue to be paid through PNM's Rider No. 47. Exhibits of PNM Witness Barnard include the pricing terms for the requested PPAs and ESAs and all the contractual provisions applicable to the new SSC Resources requested in this case.

**Q. Is PNM providing a mark-up of the proposed changes to the Current SSC and its relevant exhibits?**

**A.** Yes. The proposed changes to the Current SSC and its revised exhibits are shown in legislative format in PNM Exhibit JCA-3.

**Q. Is PNM proposing any changes to the existing tariffs used to serve the Customer?**

**A.** Yes, PNM is proposing non-rate revisions to the tariffs that are necessary to accommodate the proposed language revisions to the Restated SSC and ensure the tariff and Restated SSC are consistent. The proposed language changes are also intended to clarify the mechanics of the calculations without substantively modifying the existing arrangement already approved by the Commission in the Current SSC. The revised tariffs maintain the current protections for other customers and some of the proposed changes to Rate No. 36B, Rider No. 47 and Rider No. 49 are in fact clerical in nature.

**Q. Why is PNM proposing to amend the current Rate No. 36B?**

**A.** The most substantive changes proposed for Rate No. 36B are required to clarify the derivation of the billing determinants used for any fuel costs and non-fuel energy-related costs incurred to supply energy to the Customer from PNM's existing resources, and to account for potential curtailments for the Customer's SSC Energy Resources. As explained in more detail by PNM Witness Settlage, no rate changes are requested at this time for Rate No. 36B. PNM will seek approval of any changes to Rate No. 36B's rates in the Company's next base rate case filing. Exhibit D in the Restated SSC provides for the proposed Rate No. 36B.

**Q. What changes is PNM proposing to Rider No. 47 and Rider No. 49?**

**A.** Among the proposed clerical changes to these tariffs, PNM proposes to amend Rider No. 47 to align the tariff language and incorporate the term SSC Energy

Resources and SSC Storage Resources as defined in the Restated SSC. Exhibit C in the Restated SSC shows the proposed Rider No. 47 in this case.

The language changes proposed to Rider No. 49 provide more clarity around the calculation of the CTP Component true-up mechanism while incorporating language addressing the effects of the capacity contributions resulting from the proposed SSC Storage Resources included in this Application. PNM also proposes new language to account for certain curtailments that SSC Energy Resources may have been subject to as outlined in the specific PPAs, and as projected for the Test Period, and to adjust the Contribution to Production Component calculation accordingly.[2] Exhibit H in the Restated SSC shows the proposed Rider No. 49 in this case.

**Q. Are the proposed changes to Rate No. 36B, Rider No. 47 and Rider No. 49 consistent with the Restated SSC and previous Commission's approvals?**

**A.** Yes. The modifications to the proposed Rate No. 36B, Rider No. 47 and Rider No. 49 that have been negotiated between PNM and the Customer are consistent with the Restated SSC, previous Commission's approvals, and are agreeable to both. For example, the current CTP Component as approved by the Commission in Case No. 22-00270-UT, as well as the overall mechanism, will remain effective until the

[2] As explained in more detail in the Coincident Peak Production Methodology shown in Exhibit D1, PNM "…shall adjust the production of that resource [SSC Resource] to reflect what the production during that Coincident Peak Hour would have been had it not been curtailed".

Commission approves a modification in a subsequent case.[3] The proposed changes to Exhibit D1 to the Restated SSC, include some revised language intended to clarify the mechanics of the calculations needed to arrive at the CTP Component and also provide for the parameters needed to perform the true-up calculation per the terms of the proposed Rider No. 49. If there are no changes to the methodology used to allocate generation-related costs in PNM's next rate case filing, the calculation of the CTP will continue utilizing the methodology proposed in this case as outlined in more detail in Exhibit D1 to the Restated SSC. PNM Witness Settlage explains in more detail the changes proposed to the tariffs used to serve the Customer that address the proposed language changes to the Restated SSC as filed in PNM Advice Notice No. 645.

**Q. Why is PNM proposing the addition of a new exhibit, Exhibit I, in the Restated SSC?**

**A.** The proposed Exhibit I to the Restated SSC memorializes the agreement between PNM and the Customer to confer and negotiate a new approach to calculate the CTP Component as presented in Exhibit D1, in the event PNM proposes and the Commission approves a different allocation approach for production/generation related costs in a future base rate case filing. In its last rate case, PNM requested the use of a coincident peak allocator, based on three summer months and one winter month ("3S1W allocator"). This is important so that PNM credits the

[3] Per the terms of Rider No. 49, PNM recently made a compliance filing truing-up the CTP analysis presented in the previous rate case, demonstrating that the current CTP Component of zero is still warranted. A similar analysis showing the same result was also presented in the pending rate case filing in Case No. 24-00089-UT.

Customer a reasonable value for its SSC Resources through the cost allocation process, in concert with, and supported by any new methodology approved for generation-related costs. Furthermore, Exhibit I also requires that at the beginning of each calendar year, the Customer's SSC Storage Resources demonstrate that they are functioning at a certified rated capacity, which will be the basis to calculate the prescribed true-up process after every rate case filing, which ensures a more accurate capacity value.

**Q. Will Commission approval of the three PPAs and three ESAs proposed in PNM's application allow PNM to meet the increased load of the Customer's Data Center?**

**A.** Yes, these agreements will be added to PNM's portfolio to complement the resources approved to serve the customer previously in Case Nos. 16-00191-UT, 18-00009-UT, 18-00269-UT, 21-00031-UT, and 23-00251-UT and to support the Data Center's projected 85 MW load increase.

## III. EVALUATION CRITERIA BACKGROUND

**Q. Please summarize the regulatory background for PNM's service to the Customer.**

**A.** The Customer participates in a voluntary renewable program as provided for in the Renewable Energy Act ("REA")[4]. Through that voluntary renewable program, the

[4] NMSA 1978, § 62-16-7(B) (2019).

Customer commits to matching one hundred percent of its energy consumption on an annual basis with renewable energy. The PPAs and ESAs proposed here meet the increasing energy and capacity needs at the Customer's Data Center. The Customer has notified PNM that it is expanding the Data Center as anticipated and as allowed under the Current SSC. As with any retail customer, PNM has an obligation to serve the increased load under the Public Utility Act.[5] Pursuant to the Current SSC and Restated SSC, PNM is also required to procure sufficient Additional Renewable Energy Procurements to meet the Customer's energy and capacity requirements. Additional Renewable Energy Procurements is defined in the Restated SSC as including PPAs, ESAs, Third Party PPAs, Third Party ESAs, or other procurements by PNM agreed upon by Customer and PNM. PNM and the Customer worked together to identify and evaluate the proposed PPAs and ESAs as required by the Restated SSC. Also, as required by the Restated SSC, PNM will continue to recover the costs of these new resources directly from the Customer through Rider No. 47.

**Q. Has the Commission approved additional PPAs and ESAs to serve the Customer since Case No. 16-00191-UT?**

**A.** Yes. The Commission approved the initial special service contract between PNM and the Customer as well as Initial Solar Facilities PPAs to serve the Customer in Case No. 16-00191-UT. The Commission's approvals in that case were a key factor

[5] NMSA 1978, § 62-8-2 (1953).

in the Customer's decision to locate the Data Center in New Mexico. The Commission subsequently approved Additional Renewable Energy Procurements in Case Nos. 18-00009-UT, 18-00269-UT, 21-00031-UT and more recently in 23-00251-UT. In Case No. 18-00269-UT, the Commission also approved the Current SSC, which amended the initial special service contract to remove a 110 MW cap on PNM's obligation to procure additional SSC Resources and provided for limited changes to the special service contract rates to ensure the procurement of additional SSC Resources results in No Net Adverse Impact. In Case No. 21-00031-UT the Commission approved solar PPAs and an ESA for a 50 MW four-hour battery storage facility, the first ESA PNM entered into to serve the Customer ("Sky Ranch Project"). Finally, in Case No. 23-00251-UT, the Commission approved another PPA of 140 MW of solar capacity and an ESA of 50 MW four-hour battery storage facility ("TAG Project").

**Q. How does this application relate to the approvals granted by the Commission in Case No. 23-00251-UT, the last case approving new SSC Resources for PNM's service of the Data Center agreements and rates associated with that request?**

**A.** This Application is a natural and logical extension of the approvals granted by the Commission previously. Granting the Application will allow PNM to continue to meet its obligations to satisfy the power demands of the Customer's Data Center with additional SSC Resources to meet one hundred percent of Customer's annual need for electric energy from carbon free renewable energy resources in a manner

that will continue to provide financial benefits to the community of Los Lunas where the Data Center is located and to other communities in New Mexico where the additional renewable energy resources to be procured by PNM will be located. Combined with the clarifications in the Restated SSC, these resources will provide a benefit to the public and continue the protections afforded to PNM's other customers.

## IV. REQUIRED APPROVALS UNDER RULE 551

**Q. What approvals are necessary under Rule 551?**

**A.** 17.9.551.8(A) NMAC provides that no electric utility shall become irrevocably obligated as a purchaser under a Long Term Purchased Power Agreement ("LTPPA") without first obtaining Commission written approval of the agreement. As defined in 17.9.551.7(E) NMAC, an LTPPA is a purchased power agreement with a term of five years or more, inclusive of the base term and any extensions, for which the utility intends to seek rate recovery from New Mexico retail customers, except for LTPPAs with Qualifying Facilities or LTPPAs required to be approved under the Renewable Energy Act ("REA"). Because PNM is proposing to enter into PPAs with terms of twenty years, which are not subject to the REA, Commission approval is required. Under 17.9.551.10(A) NMAC, the Commission may approve the Application without hearing if no protests are filed within sixty days after notice of the Application is given. 17.9.551.10(B) NMAC also provides that, in any event, the Commission is obligated to issue a final order no later than six months from the

date a utility files its application. Any application for Commission approval of an LTPPA must be filed within thirty days after the execution.

**Q. Is PNM's Application being filed within thirty days of the execution of the LTPPAs?**

**A.** Yes. The PPAs and ESAs associated with this application were executed on May 29, 2025 and June 6, 2025. PNM's Application is being filed on June 13, 2025, therefore meeting the 30-day deadline established by 17.9.551.8(B) NMAC.

**Q. Has PNM's Application satisfied the requirements of Rule 551 in this case?**

**A.** Yes. PNM's Application, testimony and exhibits satisfy all informational and filing requirements of 17.9.551.8 NMAC and 17.9.551.9 NMAC. Please see PNM Exhibit 1 and PNM Exhibit 2, respectively to the Application for a table showing where each provision of Rule 551 is addressed in PNM's testimonies.

**Q. Will there be any impact from any of the PPAs and ESAs on PNM's financial condition or financial metrics (17.9.551.8 D(7) NMAC)?**

**A.** Neither the PPAs nor the ESAs should impact PNM's financial condition because 100% of the contract costs are recovered from the Customer, and the Customer is contractually obligated for the costs of the PPAs and ESAs in the event the Restated SSC is terminated.

**Q. How does PNM plan to recover the costs associated with these projects and what is the anticipated effect on rates to customers 17.9.551.8(D)(4) NMAC and 17.9.551.9(A) NMAC?**

A. 17.9.551.9(A) specifies the ratemaking treatment that will apply to all PPAs unless otherwise authorized by Commission order. Also, pursuant to 17.9.551.8(D)(4) NMAC, PNM must provide "an explanation of how the electric utility proposes to recover from ratepayers the costs incurred and an estimate of the effect on rates to customers". As provided in the Restated SSC and as explained earlier in my testimony, PNM will recover all costs of the PPAs and ESAs directly from the Customer through Rider No. 47.

## V. REQUESTED VARIANCES

**Q. Is PNM seeking a variance from 17.1.2.10(B)(2)(b) NMAC and PNM's 2nd Revised Rule No. 4?**

A. Yes. These provisions require standard language to be included in contracts with customers providing that contract rates are subject to change by Commission order and that PNM may seek Commission approval to modify the contract rates. The reason PNM seeks a variance from these provisions in the Restated SSC is similar to PNM's request for the same variance with regard to the Current SSC approved in Case No. 18-00269-UT. The Customer is concerned that the standard language required for contracts by 17.1.210.12(B) NMAC and PNM's 2nd Revised Rule No. 4 C might, in the future, be used to deprive the Customer of the benefits of the

agreement struck to locate and expand the Data Center in New Mexico as outlined in the SSC and Restated SSC. The terms of the Restated SSC, including the associated Special Service Rate (i.e., Rate No. 36B), Green Energy Rider No. 47, and Production Cost Allocation Rider No. 49, protect PNM's other customers such that compliance with 17.1.210.12(B) NMAC and PNM's Rule No. 4 C is not necessary to protect them or the public interest.

**Q. What variances is PNM requesting from the Commission's rate filing requirements and why is PNM requesting those variances?**

**A.** To the extent it is necessary, PNM requests a variance from the requirement in 17.1.2.10(B)(2)(b) NMAC for a statement comparing new rates with present rates and the minimum data filing requirements for general rate cases under 17.9.530 NMAC. The statement of comparison required by 17.1.2.10(B)(2)(b) NMAC is inapplicable in this case because PNM is not proposing any new or revised rates for the tariffs used to serve the Customer. The modifications to Rate No. 36B, Rider No. 47, and Rider No. 49 proposed in this case are administrative in nature, intended to align with the proposed language in the Restated SSC.

**Q. What variances is PNM requesting from the Commission's rate filing requirements and why is PNM requesting those variances?**

**A.** PNM is asking for a variance from 17.9.530 NMAC, given that the data required by this rule would provide no additional information useful for evaluation of the approvals sought by PNM's application because the data is applicable to general

rate changes. The time that would be required for PNM to develop the information necessary to comply with 17.9.530 NMAC would frustrate PNM's ability to obtain timely commission approval of its Application. The Commission has also granted these variances in the previous amendment to the Restated SSC.

## VI. THE APPLICATION IS IN THE PUBLIC INTEREST

**Q. Please explain how the public interest determination made in Case Nos. 16-00191-UT and 18-00269-UT relates to PNM's Application in this case.**

A. PNM applied to the Commission in Case Nos. 16-00191-UT and 18-00269-UT for the approval of tariffs, terms and conditions by which PNM would provide retail electric service for the Data Center project, as well as the approval of various renewable resources to meet the energy Data Center requirements. As explained in testimony in those and other subsequent cases, PNM and the Customer foresaw the need for PNM to procure additional renewable resources beyond the existing PPAs and ESAs as the Data Center load expanded, and, therefore, established a collaborative process for acquiring additional resources. In its Final Order in Case No. 16-00191-UT, the Commission found that, viewing the transaction as a whole, PNM's application provided a number of net benefits to PNM's customers and the New Mexico economy, was in the public interest, and should be approved.[6] In its Final Order in Case No. 18-00269, the Commission found that PNM's application in that case was in the public interest because it allowed PNM to supply the

[6] Case No. 16-00191-UT Final Order ¶ 98.

necessary renewable energy to serve the Customer's needs at fair, just and reasonable rates while ensuring that there is No Net Adverse Impact to any other PNM retail electric service customers.[7]

PNM's Application in this case for additional renewable energy resources to meet projected Data Center load growth accords with the terms and conditions of service to the Customer approved previously, as modified by the changes proposed in the Restated SSC requested in this case. This Application, then, can be seen as a natural and welcome extension of that initial and subsequent public interest filings. The approval of PPAs, ESAs and the proposed modifications to the Restated SSC sought here bring additional benefits and maintain the determination of No Net Adverse Impact, as discussed later in my testimony.

**Q. Has the Data Center provided economic benefits, and will expansion of the Data Center as requested in this Application bring additional economic benefits to the Los Lunas community and other communities in New Mexico?**

**A.** Yes. PNM Exhibit JCA-4 describes the direct economic impact of the Customer's Data Center to date as well as the expansion. Approval of PNM's Application is an essential part of that plan, which is expected to result in the following economic development benefits:

[7] Case No. 1800269-UT Final Order ¶ 76.

• Approximately $2.5 billion of total investment in construction and equipment of Customer's Data Center in Los Lunas, New Mexico, including the current phase of construction; and

• An average of 1,100 skilled trade workers on site daily during peak construction of the past and on-going phases of buildout, and over 400 direct operational jobs following completion.

• To date, more than $5 million in direct grant funding to over 115 Valencia County area schools and nonprofits since 2019.

**Q. Please describe the No Net Adverse Impact ("NNAI") Standard.**

**A.** NNAI as defined in the Restated SSC means that, on balance, this Contract (i.e., the Restated SSC) and the PNM tariffs described herein result in a neutral or positive impact on rates for PNM's other retail electric service customers considering all relevant benefits generated and burdens created by this Contract and those PNM tariffs, as determined pursuant to Section 5.1.2 of this Contract.[8]

**Q. How does PNM expect to determine that the Restated SSC meets the No Net Adverse Impact or NNAI?**

**A.** In accordance with the language agreed to by PNM and the Customer, NNAI is essentially a no-subsidization test, that is met if the total revenue paid by the Customer (as approved by the Commission in a rate case) more than offsets the

[8] Restated SSC at p. 8.

total revenue requirements (i.e., costs) that would have been allocated to the Customer, absent their SSC Resources as outlined in the Restated SSC. Mathematically, the NNAI determination is met if:

$$\boldsymbol{TotRR_P \geq TotRR_{COS} - PRRO_{Sub}}$$

$TotRR_P$ = Total Revenue Requirement Projected for 36B in Test Year ("TY")[9]

$TotRR_{COS}$ = Total Cost Based Revenue Requirement for 36B per COS in TY

$PRRO_{Sub}$ = Production Revenue Requirement Offset Subsidy from 36B in TY

$$\boldsymbol{Where: PRRO_{Sub} = Max[0, (PRR_{Offset} - PRR_{COS})]}$$

$PRR_{Offset}$ = Production Revenue Requirement Offset for 36B in TY

$PRR_{COS}$ = Production Revenue Requirement per COS for 36B in TY

The difference between the $PRR_{Offset}$ and the $PRR_{COS}$, if zero or positive, represents the potential benefits provided towards production costs supplied by the Customer's SSC Resources, valued at the system average generation cost. This means that during the test period of a rate case filing the Customer's SSC Resources at least offset or more than offset the production related revenue requirement that would have been allocated to the customer absent the Customer's SSC Resources. Otherwise, the difference between the $PRR_{Offset}$ and the $PRR_{COS}$ will be negative, indicating there will be no benefits in excess of the generation costs that the Customer is responsible for.

[9] Total Revenue Requirement and Total Cost Based Revenue Requirement are calculated including the generation related costs projected at cost-of-service level for Rate No. 36B customer(s) as estimated in the CTP Component calculation and using Rate No. 36B's projected production coincident peak demands.

**Q. If when calculating the difference between $PRR_{Offset} - PRR_{COS}$, the result is negative, does it mean that PNM's other customers will be adversely impacted?**

**A.** No. In the event this calculation is negative (i.e., when the Production Revenue Requirement indicated in the cost of service for Rate No. 36B is higher than Production Revenue Requirement Offset, which represents the value of the Customer's SSC Resources), this will result in a Contribution to Production Component greater than zero, that will be assessed to the Customer through Rate No. 36B and that will ensure the Customer pays the totality of the generation related costs incurred to serve it and compensate PNM's other customers for this difference.

**Q. Given that the formula to calculate the Production Revenue Requirement Offset Subsidy from 36B is capped at zero, does that mean that there could be an adverse impact on PNM's other customers?**

**A.** No. The calculation of NNAI still ensures that in total, the revenue requirements allocated to Rate No. 36B will be at least equal or greater than the revenue requirements calculated at the cost-based level, per the results of the Company's COS, avoiding the subsidization of the Customer served under Rate No. 36B.

**Q. Are the approvals requested in this case consistent with the NNAI Standard?**

**A.** Yes. While NNAI is a determination to be made only during a general rate case, when all relevant information is available, the approvals requested in this case are fully consistent with the NNAI standard. First, the totality of cost associated with the SSC Resources proposed in this Application will be recovered from the Customer through Rider No. 47. In addition, as shown in the formula above and in Exhibit D1 in the Restated SSC, the Customer will continue to be responsible for the allocated amount of revenue requirements associated with customer related costs, transmission-related costs and other fuel and non-fuel energy related costs, as determined in the applicable rate case filing going forward and as approved by the Commission.

**Q. Has PNM conducted any additional analysis demonstrating that the Current SSC and the Restated SSC rate structure meet the No Net Adverse Impact Standard?**

**A.** Yes, per the current terms of Rider No. 49, on April 15, 2025, PNM filed its first reconciliation filing comparing the coincident peak production of the SSC Resources based on stipulated capacity value factors, upon which rates were set for in the Test Period ending on December 31, 2024, and as filed in PNM rate case in Case No. 22-00270-UT, to actual coincident peak production data. In its calculation, PNM showed that when the Customer resources' estimated production (i.e., Production Revenue Requirement Offset in formula above) was trued-up with actual data, the Customer's Contribution to Production Component remained at zero, indicating that the value of the Customer's SSC Resources did not result in

any under collection of generation-related costs, confirming what was projected for the Test Period ending on December 31, 2024.

**Q. What does this mean in terms of the formula outlined above?**

**A.** Using the terminology from the formula referenced above, the 2025 true up showed that the Production Revenue Requirement Offset was greater than the Production Revenue Requirement per the COS during the Test Period of 2024. Therefore, the Total Revenue Requirement projected for Rate No. 36B that was used to set base rates, was greater than the Total Revenue Requirement per the COS, thus resulting in no subsidization to Rate No. 36B and No Net Adverse Impact to other PNM's customers. The Direct Testimony of PNM Witness Settlage provides a numerical example showing the analysis supporting the calculation of the CTP Component and No Net Adverse Impact as outlined in the formula referenced above.

**Q. Will the approval of the Restated SSC and the requested SSC Resources impose any other incremental costs on PNM's other retail customers, such as transmission network upgrades?**

**A.** No, the investments in network upgrades for the additional SSC Resources to meet the Data Center's load will not impose any incremental cost on PNM's other retail customers.[10] According to the Restated SSC, any other facilities costs that are

[10] There are some on-going operations and maintenance costs associated with the transmission facilities required for the SSC Resources proposed in this case. However, as explained by PNM Witness Stephen Jenkins, the annual amount is *di minimis* and represents costs that PNM is obligated to incur for any similar transmission project, and not necessarily specific to the PPAs and ESAs requested in this case.

directly attributable to upgrades that can only be used by Customer will be recovered by PNM through direct reimbursement by Customer under separate Electric Facilities Agreement(s) or reimbursement agreement(s) between Customer and PNM.

## VII. STAKEHOLDER ENGAGEMENT

**Q. Please describe PNM's stakeholder engagement regarding this Application.**

A. PNM scheduled and held meetings with stakeholders to provide an overview of PNM's Application and gather some preliminary feedback. PNM shared an overview of the Application including the proposed resources and addressed questions from stakeholders in attendance during the May 22, 2025 bi-monthly External Stakeholder meeting. Additionally, PNM met with the Commission Staff on May 14, 2025, and with the New Mexico Department of Justice on May 20, 2025 to present an overview of the proposals included in this application. PNM values the feedback and collaboration received throughout this engagement process.

## VIII. CONCLUSION

**Q. Please summarize the conclusions reached in your testimony.**

A. Approval of PNM's Application is in the public interest. Consistent with the Commission's Final Order in Case No. 18-00269-UT and the amendments to the SSC approved in that case, PNM has collaborated with the Customer to determine

a cost-effective solution to meet the Customer's growing energy needs. PNM's Application in this case meets all requirements of Rule 551 with regard to the approval of the Four-Mile Mesa PPA and ESA, the Star Light PPA and ESA, and the Windy Lane PPA and ESA, and it is in the public interest. Commission approval of all the SSC Resources described in PNM's Application, pursuant to the modifications of the Current SSC as set forth in the Restated SSC and the implementation of the proposed revisions to Rate No. 36, Rider No. 47 and Rider No. 49, will provide for a mechanism to maintain a No Net Adverse Impact to PNM's other retail customers and will result in the additional economic development benefits in New Mexico described earlier in this testimony. Commission approval of the proposed SSC Resources and Restated SSC described in PNM's Application is necessary to timely meet the Customer's capacity and energy needs for the expanded Data Center.

**Q. Does this conclude your testimony?**

**A.** Yes, it does.

*GCG#533866*

Resume of Julio C. Aguirre

# PNM Exhibit JCA-1

Is contained in the following 4 pages.

# JULIO C. AGUIRRE

## EXPERIENCE AND QUALIFICATIONS

**CURRENT POSITION:** *Director, Pricing and Customer Strategy*. Public Service Company of New Mexico (PNM)

**EDUCATION:**

Master of Liberal Arts (ALM), Finance. Harvard University (Extension School), Expected 12/2025.

Master of Arts (MA), Economics, *Specialization in Public Utility Policy & Regulation*. New Mexico State University (NMSU).

Bachelor of Arts (BA), International Economics, Autonomous University of Chihuahua (UACH).

**EXPERIENCE:**

*Program Manager, Rates and Pricing*. Grant County PUD. (09/2021-12/2024)

*Manager, Rate Development.* GridLiance/NextEra Energy. (12/2020-09/2021)

*Senior Rate Analyst,* El Paso Electric Co. (12/2018-12/2020)

*Lead Pricing Analyst,* Public Service Company of New Mexico. (11/2015-12/2018)

*Senior Pricing Analyst,* Public Service Company of New Mexico. (11/2010-10/2015)

*Regulatory Economist*, Regulatory Operations Staff, Public Utilities Commission of Nevada. (12/2009-11/2010).

*Senior Utility Analyst*, Regulatory Operations Staff, Public Utilities Commission of Nevada. (09/2007-11/2009)

*Research Assistant*, Center for Personal Finance and Economic Education (CEPFE), New Mexico State University. (01/2006-06/2007)

*Research Associate*, Research Institute for Economic and Technological Development, Chihuahua Mexico. (01/2002-07/2005)

## PREVIOUS TESTIMONY

| Proceeding | Regulatory Body | Docket No. |
|---|---|---|
| Application of Sierra Pacific Power Company for authority to begin to recover the costs of constructing the new Tracy Combined Cycle Unit and other plant additions and costs of service through an increase of its annual revenue requirement for general rates charged to all classes of electric customers and for relief properly related | Public Utilities Commission of Nevada | 07-12001 |
| Application of Nevada Power Company for approval of its 2008 Annual Demand Side Management Update Report as it relates to the Action Plan of its 2007-2026 Integrated Resource Plan. | Public Utilities Commission of Nevada | 08-08011 |
| Application of Sierra Pacific Power Company filed under Advice Letter No. 490-E to revise the Statement of Rates and Interruptible Irrigation Service Schedule No. IS-2 to increase the IS-2 rate and establish the Peak Period Non-Curtailment Penalty rate. | Public Utilities Commission of Nevada | 08-10043 |
| Application of Nevada Power Company for authority to increase its annual revenue requirement for general rates charged to all classes of customers to recover costs of acquiring the Bighorn Power Plant, constructing the Clark Peakers, environmental retrofits, and other generating, transmission, and distribution plant additions; to reflect changes in cost of service; and for relief properly related thereto. | Public Utilities Commission of Nevada | 08-12002 |
| Application of Southwest Gas Corporation for authority to increase its rates and charges for natural gas service for all classes of customers in Southern and Northern Nevada. | Public Utilities Commission of Nevada | 09-04003 |
| Application of Sierra Pacific Power Company d/b/a NV Energy filed under Advice Letter No. 503-E to revise Interruptible Irrigation Service Schedule No. IS-2 to increase the IS-2 rate and decrease the Peak Penalty rate. | Public Utilities Commission of Nevada | 09-09020 |
| Application of Nevada Power Company d/b/a NV Energy for approval of its 2010-2029 Triennial Integrated Resource Plan. | Public Utilities Commission of Nevada | 10-02009 |

| | | |
|---|---|---|
| Annual Report of Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy on compliance with the Portfolio Standard for Renewable Energy for Compliance Year 2009. | Public Utilities Commission of Nevada | 10-04002 |
| Application of Sierra Pacific Power Company d/b/a NV Energy for authority to increase its annual revenue requirement for general rates charged to all classes of electric customers and for relief properly related thereto. | Public Utilities Commission of Nevada | 10-06001 |
| Application of Sierra Pacific Power Company d/b/a NV Energy for authority to increase its annual revenue requirement for general rates charged to all classes of gas customers and for relief properly related thereto. | Public Utilities Commission of Nevada | 10-06002 |
| Application of Sierra Pacific Power Company d/b/a NV Energy for approval of its 2011-2030 Triennial Integrated Resource Plan. | Public Utilities Commission of Nevada | 10-07003 |
| In the Matter of the Application of Public Service Company of New Mexico for Approval of the City of Santa Fe 2012 Underground Project Rider pursuant to Advice Notice No. 447. | New Mexico Public Regulation Commission | 12-00100-UT |
| In the Matter of the Public Service Company of New Mexico's Advice Notice No. 471 and Request for Variance (Energy Efficiency Reconciliation). | New Mexico Public Regulation Commission | 13-00113-UT |
| In the Matter of the Application of Public Service Company of New Mexico for Approval of Renewable Energy Rider No. 36 Pursuant to Advice Notice No. 439 and for Variances from Certain Filing Requirements. | New Mexico Public Regulation Commission | 12-00007-UT |
| In the Matter of the Application of Public Service Company of New Mexico 's Advice Notice No. 490 and Request for Variance related to the Reconciliation of Energy Efficiency Costs, Revenues and Profit Incentives. | New Mexico Public Regulation Commission | 14-00111-UT |
| In the Matter of the Application of Public Service Company of New Mexico for Revision to its Retail Electric Rates Pursuant to Advice Notice No. 507. | New Mexico Public Regulation Commission | 14-00332-UT |

| | | |
|---|---|---|
| In the Matter of the Application of Public Service Company of New Mexico for Revision to its Retail Electric Rates Pursuant to Advice Notice No. 513. | New Mexico Public Regulation Commission | 15-00261-UT |
| In the Matter of the Application of Public Service Company of New Mexico for Approval of its 2017 Electric Energy Efficiency Program Plan, Profit Incentive and Revised Rider No. 16. | New Mexico Public Regulation Commission | 16-00096-UT |
| In the Matter of the Application of Public Service Company of New Mexico for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 533 | New Mexico Public Regulation Commission | 16-00276-UT |
| In the Matter of the Application of Public Service Company of New Mexico for Approval of its 2018 Electric Energy Efficiency Program Plan, Profit Incentive and Revised Rider No. 16, pursuant to the NM Public Utility Act, Efficient Use of Energy Act and Energy Efficiency Rule. | New Mexico Public Regulation Commission | 17-00076-UT |
| In the Matter of the Petition of Public Service Company of New Mexico for Energy Efficiency Disincentive Identification and Removal Mechanism Approvals. | New Mexico Public Regulation Commission | 18-00043-UT |
| In the Matter of El Paso Electric Company's Application for a Certificate of Public Convenience and Necessity to Construct a Solar Generation/Storage Project at New Mexico State University and for Approval of a Special Rate Contract. | New Mexico Public Regulation Commission | 19-00350-UT |
| In the Matter of the Application of El Paso Electric Company for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 268 | New Mexico Public Regulation Commission | 20-00104-UT |
| In the Matter of the Application of Public Service Company of New Mexico for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 625 | New Mexico Public Regulation Commission | 24-00089-UT |

Third Amended and Restated Special Service Contract

# PNM Exhibit JCA-2

Is contained in the following 361 pages.

INB3522875

# THIRD AMENDED AND RESTATED SPECIAL SERVICE CONTRACT

**between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**GREATER KUDU LLC**

Dated as of June 12, 2025

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## LIST OF EXHIBITS

A. [Reserved.]

B. Form of Third Party PPA
Form of Third Party ESA

C. Form of Green Energy Rider

D. Form of Special Service Rate
D1. Special Service Rate Calculations

E. Methodology for Determining Early Termination Payment

F. Guaranty

G. Notice List

H. Form of Production Cost Allocation Rider

I. CTP Offset Principles for SSC Storage Resources

INB3522875

## THIRD AMENDED AND RESTATED SPECIAL SERVICE CONTRACT

This Third Amended and Restated Special Service Contract ("**Contract**"), entered into this __ day of June, 2025 ("**Execution Date**"), is by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or **"Company"**) and Greater Kudu LLC, a Delaware limited liability company ("**Customer**") and amends the Second Amended and Restated Special Service Contract dated August 21, 2018 ("**Second Amended Contract**"), between PNM and Customer. PNM and Customer may be referred to in this Contract individually as a "Party" and collectively as the "Parties."

## RECITALS

This Contract is made with reference to the following facts, among others:

A. PNM is a public utility that owns and operates electric generation, transmission and distribution facilities and is subject to the laws of the State of New Mexico and the jurisdiction of the New Mexico Public Regulation Commission ("**NMPRC**").

B. PNM and Facebook, Inc., nka Meta Platforms, Inc., Customer's parent corporation ("**Facebook**"), entered into a Special Service Contract effective July 9, 2016 ("**Original Contract**"), which sets forth Facebook's intent to develop, construct, own and operate a data center, employing the best available energy efficiency technology and equipment, on a phased basis and, at its sole cost and expense, consisting of one or more facilities to be located at a site within PNM's service territory ("**Data Center**").

C. The Original Contract also sets forth PNM's agreement to provide electric supply service to the Data Center primarily through a blend of renewable resources as the load at the Data Center increases over time, which will require procurement by PNM of energy and capacity from Renewable Energy Facilities at Customer's sole cost and expense.

D. The NMPRC issued a final order approving the Original Contract on August 17, 2016, in the Matter of the Application of Public Service Company of New Mexico for Expedited Approval of Power Purchase Agreements, Special Service Rate and Special Service Contract, New Green Energy Rider, Exemption from Energy Efficiency Rider, Variances from 17.1.210.12(B) and PNM Rule No. 4, ¶ C and for Other Related Regulatory Approvals**,** Case No. 16-00191-UT.

E. PNM and Facebook entered into the First Amended Contract to, among other things, reflect certain amendments and corrections to the Original Contract made during the hearing in Case No. 16-000191-UT and update the Customer Charge and Transmission Demand Charge approved by the NMPRC in Case No. 16-00276-UT. Facebook subsequently assigned the First Amended Contract to Customer pursuant to **Section 14.1** of the First Amended Contract on December 5, 2017, and as amended on December 7, 2017.

F. PNM and Customer entered into the Second Amended Contract to, among other things, remove the maximum load limit and change the contribution to production cost element to a demand charge and modify this component to no longer be fixed in nature.

G. The NMPRC issued a final order approving the Second Amended Contract on October 17, 2018, in the Matter of Public Service Company of New Mexico's Application for Approval of an Amended Special Service Contract with Greater Kudu LLC, Two Purchased Power Agreements Pursuant to 17.9.551 NMAC, Original Rider No. 49, Amended Rate No. 36B and Amended Rider No. 47, Case No. 18-00269-UT.

H. Customer desires to meet one hundred percent (100%) of Customer's annual need for electric energy for the Data Center from clean and renewable energy resources to be owned by PNM or acquired by PNM under one or more power purchase agreements having fixed terms and conditions, the cost of which, in either case, will be recovered from Customer as provided in the Green Energy Rider as defined in this Contract.

I. The Parties agree that the addition of SSC Storage Resources provides benefits to the PNM system, and agree to determine principles that properly allocate the benefits of such resource additions per the terms of this Contract.

J. PNM desires to sell, and Customer desires to purchase, on the terms set forth in this Contract, all electric capacity and energy required to meet the electric utility service requirements of the Data Center.

K. In order to provide electric service to the Data Center to meet Customer's load requirements, additional extensions of PNM's electric system may be required from time to time.

L. PNM and Customer intend that this Contract and all of the PNM tariffs described in this Contract will allow PNM to recover its reasonable costs of providing electric service to Customer for the Data Center in a manner that results in No Net Adverse Impact (as defined in this Contract).

M. PNM's charges for electric service to Customer under this Contract will consist of Rate 36B--Special Service Rate, Rider No. 47--Green Energy Rider, Rider No. 49--Production Cost Allocation Rider, and other applicable rate riders, all as described in **Section 5**.

N. The Parties now desire to amend and restate the Second Amended Contract as necessary to accommodate Customer's request and to reflect certain changes agreed to by the Parties as set forth in this Contract.

## AGREEMENT

In consideration of the premises and mutual covenants contained in this Contract, the Parties, intending to be bound, hereby agree as follows:

## 1. DEFINITIONS

1.1 As used in this Contract, the following terms, when initially capitalized, shall have the following meanings:

"**Additional Renewable Energy Procurements**" means, subject to the procedures set forth in **Section 3.1.2**, procurements of Renewable Energy resources and/or Alternative Capacity Projects other than the Initial Solar Facilities PPAs, pursuant to PPAs, ESAs, Third Party PPAs, Third Party ESAs, or other procurements by PNM agreed upon by Customer and PNM.

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

"**Alternative Capacity Project**" means, subject to the procedures set forth in **Section 3.1.2**, any project that can provide capacity to serve the Customer's needs.

"**Applicable Laws**" means, in relation to any person, entity, transaction or event, all federal, state, provincial, local or municipal laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses, permits, directives, and requirements of all regulatory and other Governmental Authorities, by which such person or entity is bound or having application to the transaction or event in question.

"**Balancing Area Authority**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankrupt**" means, with respect to a Party:

(a) The Party makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated as bankrupt or insolvent; files a petition or answer seeking for the Party any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; the Party files any answer admitting or not contesting the material allegations of a petition filed against the Party (as applicable) in any such proceeding; or the Party seeks, consents to, or acquiesces in, the appointment of any trustee, receiver, custodian, or liquidator of the Party or of all or any substantial part of the Party's properties; or the Party's directors, or shareholders take action to dissolve or liquidate the Party; or

(b) Involuntary petitions in bankruptcy are brought against the Party or an answer proposing the adjudication of the Party as a debtor or bankrupt or proposing the Party's liquidation or reorganization pursuant to any applicable bankruptcy law is filed in any court and the Party consents to or acquiesces in the filing thereof or such petition or answer is not dismissed within sixty (60) days after the filing thereof.

"**Business Day**" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, a holiday in the State of New Mexico, or the Friday following Thanksgiving. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time.

**"CAISO"** means the California Independent System Operator.

**"Capacity Agreement"** means an agreement regarding Alternative Capacity Projects that is not an ESA.

**"Claiming Jurisdiction"** means California, Washington, and any jurisdiction or balancing authority area that will claim or purport to claim for the importer, recipient, or jurisdiction, through compliance mechanisms or otherwise, the Carbon or greenhouse gas characteristics or any other Environmental Attributes of the energy or capacity delivered into such jurisdiction or balancing authority area, or create a circumstance that could lead to any of (i) the retirement of Renewable Energy Certificates in whole or in part, (ii) claims to Environmental Attributes, (iii) questions as to why the Renewable Energy Certificates were not retired in whole or in part by the delivery, for example in the nature of the Oregon Department of Energy's June 23, 2017, request for stakeholder comment; (iv) questions as to why Customer's Environmental Claims were not affected by such delivery or (v) any of the circumstances set forth in item (iv) in the definition of Deemed Delivery.

"**Confidential Information**" has the meaning set forth in **Section 15.1**.

"**Contract**" has the meaning set forth in the preamble, including any exhibits and attachments thereto, as each may be amended from time to time.

"**Contribution to Production Component**" has the meaning set forth in **Exhibit D1, Section C.**

**"Cost-Based Allocated Revenue Requirement"** means the amount of functionalized revenue requirement allocated to any specific rate class as determined through a cost of service study as accepted by the NMPRC in a rate case, which may differ from the Test Period Revenue or actual realized revenue for the rate class based on rates approved by the NMPRC.

"**Customer**" has the meaning set forth in the Preamble.

"**Customer Event(s) of Default**" has the meaning set forth in **Section 9.1**.

"**Customer Indemnitee**" has the meaning set forth in **Section 13.2**.

"**Data Center**" means the facility described in **Recital B.**

**"Deemed Delivery"** means (i) "direct delivery of electricity" from an SSC Resource as that term is used in California's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 et seq.) in the case of California as a Claiming Jurisdiction, as that term is used in Washington's regulation for Reporting of Greenhouse Gases (W.A.C. ch. 173-441) in the case of Washington as a Claiming Jurisdiction, or the analogous term under any other Claiming Jurisdiction's greenhouse gas reporting or cap-and-trade regulations pursuant to which deliveries of electricity are assigned to, attributed to, or designated as being from a specified generator in the case of any other Claiming Jurisdiction, (ii) delivery or scheduling of electricity or capacity from an SSC Resource is eligible for a greenhouse

gas award or allowance through submission of a greenhouse gas bid (or comparable action), (iii) a Claiming Jurisdiction can otherwise claim or purport to claim for the importer, recipient, or jurisdiction, through compliance mechanisms or otherwise, the Renewable Energy Attributes or any other carbon or greenhouse gas characteristics of the SSC Resource's energy or capacity delivered into such Claiming Jurisdiction; or (iv) the delivery to the Claiming Jurisdiction will lead to or create a circumstance that could lead to any of (A) the retirement of SSC Resource RECs, the reduction of the number of SSC Resource RECs retired on Customer's behalf, or interference with or contravention of Customer's exclusive rights to make the claims related to the Renewable Energy Attributes, (B) claims to Renewable Energy Attributes, or (C) impairments of Renewable Energy Attributes by the initiation of a proceeding before any state or federal securities, utility, environmental, energy, or transportation regulator the subject of which relates to retirement of Renewable Energy Attributes due to the report of delivery of electricity, for example in the nature of the Oregon Department of Energy's June 23, 2017, request for stakeholder comment. The mere physical flow of energy to a Claiming Jurisdiction absent (i), (ii) (iii) or (iv) does not constitute a Deemed Delivery.

"**Early Termination Payment**" has the meaning set forth in **Section 9.6.**

"**EDAM**" means the CAISO extended day-ahead market.

"**Effective Date**" means the date on which NMPRC Approval is obtained.

**"EIM"** means the CAISO energy imbalance market.

"**Equitable Defense**" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

**"ESA"** means energy storage agreement.

"**Event of Default**" means a Customer Event of Default or a PNM Event of Default.

**"Excess Energy"** means energy delivered to PNM's system from the SSC Resources that exceeds, on an hourly basis, the sum of (i) Customer's load at the Data Center and (ii) the energy charging SSC Storage Resources; including discharging SSC Storage Resources that does not serve Customer's load at the Data Center and excluding discharging energy from SSC Storage Resources that does serve Customer's load at the Data Center.

"**Excess Energy Production Credit**" means Excess Energy for the hour times the power price index, for the hour, to which the Parties may mutually agree in writing from time to time, *provided that* to the extent the seller in any SSC Resource Procurement agrees to bear the risk of any negative pricing or Excess Energy, then the Excess Energy Production Credit as it relates to Excess Energy from the applicable SSC Resource shall be adjusted to credit to Customer the allocation to the seller of such risk as agreed to in the applicable SSC Resource Procurement.

"**Execution Date**" has the meaning set forth in the preamble.

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"**Facebook**" has the meaning set forth in the Recitals.

"**FERC**" means the Federal Energy Regulatory Commission or its successor agency.

"**First Amended Contract**" has the meaning set forth in the Preamble.

"**Governmental Authority**" means:

(a) Any federal, state, local, municipal or other governmental entity;

(b) Any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power (including the North American Electric Reliability Corporation); or

(c) Any court or governmental tribunal, or any quasi-governmental or self-regulatory body, agency; provided, however, that "Governmental Authority" shall not include either Party.

"**Green Energy Rate**" has the meaning set forth in **Section 5.1.1**.

"**Green Energy Rider**" has the meaning set forth in **Section 5.1**.

"**Initial Solar Facilities PPA**" has the meaning set forth in **Section 3.1.1**.

"**Losses**" means, with respect to any Party, any and all liabilities (including but not limited to liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages, penalties, claims, actions, suits, judgments, costs, expenses and disbursements (including reasonable legal fees and expenses), and whether arising in equity, at common law, or by statute, or under the law of contracts, torts or property, of whatsoever kind and nature, including without limitation claims for property damage, and personal injury.

"**Market Cap**" has the meaning set forth in **Section 14.1**.

"**Market Operator**" means the operator of the Balancing Authority Area or any other entity performing the market operator function for the Balancing Authority Area or any organized day-ahead or intra-hour market for a region that includes PNM's system.

"**MW**" means a megawatt (or 1,000 kilowatts) of electric energy generating capacity or demand.

"**MWh**" means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.

"**NERC**" means the North American Electric Reliability Corporation or any successor

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organization.

"**New Mexico Public Regulation Commission**" or "**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in **Section 2**.

"**No Net Adverse Impact**" means that, on balance, this Contract and the PNM tariffs described herein result in a neutral or positive impact on rates for PNM's other retail electric service customers considering all relevant benefits generated and burdens created by this Contract and those PNM tariffs, as determined pursuant to **Section 5.1.2** of this Contract.

"**Notice**" means notices, requests, statements, invoices, or payments provided in accordance with **Section 17** and **Exhibit G**.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Person**" means any individual, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**PNM Event(s) of Default**" has the meaning set forth in **Section 9.3**.

"**PNM Indemnitee**" has the meaning set forth in **Section 13.1**.

"**PPA**" means a power purchase agreement.

"**Production Cost Allocation Rider**" has the meaning set forth in **Section 5.3**.

"**Production Revenue Requirement**" is the PNM filed Test Period Revenue associated with production-related costs included in the Company's cost of service study in the corresponding rate case filing as accepted by the NMPRC, in accordance with the formula provided in Exhibit D1, ¶ (C).

"**Production Revenue Requirement Offset**" is defined in Exhibits D1.

**"Production Revenue Requirement Offset Subsidy"** means the greater of (a) $0 or (b) as each are determined only during each general rate proceeding, (i) the Production Revenue Requirement Offset minus (ii) The Production Revenue Requirement.

"**Promotional Materials**" has the meaning set forth in **Section 15.7.2**.

"**Records**" has the meaning set forth in **Article 26**.

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**"Regional Market"** means a regional market entity that, to enable PNM's participation, would require PNM to definitively relinquish control and responsibility for implementation of NERC BAL-001 standards and any successor reliability standard, or otherwise uses pricing mechanisms to determine individual generating unit dispatch; provided that a Regional Market does not include CAISO's EIM or EDAM, Southwest Power Pool's Markets+ or other voluntary day-ahead market within the Western Interconnection whereby participants are not required to include all energy and capacity resources on their system in order to participate in such market.

"**Reliability Curtailment**" is defined in **Section 8.1.1**.

"**Renewable Energy**" means electrical energy generated from a source that (i) is not fossil carbon-based and (ii) constantly renews itself or that is regarded as practically inexhaustible, which may include without limitation solar, wind, or geothermal technologies.

"**Renewable Energy Act**" means NMSA 1978, Sections 62-16-1 to -10.

"**Renewable Energy Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Renewable Energy Facilities' generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, emission rate credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Renewable Energy. Renewable Energy Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change (UNFCCC) and related Kyoto Protocol or other programs, laws or regulations. Renewable Energy Attributes include all Environmental Attributes and Future Environmental Attributes for any SSC Resource as defined in the applicable Third Party PPA or Third Party ESA, as well as the exclusive right to report the ownership of any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances to any other Person, including in compliance with federal or state law if applicable. Renewable Energy Attributes specifically exclude (i) Tax Credits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Renewable Energy Facilities, and (iii) any energy, capacity, reliability or other power attributes from the Renewable Energy Facilities.

"**Renewable Energy Certificate**" or "**REC**" means a document evidencing that the enumerated renewable energy kilowatt hours have been generated from a Renewable Energy Facility and certified as such by WREGIS in accordance with the Renewable Energy Act. For purposes of this Contract, including PNM's obligations under **Section 3.2**, the RECs shall be accumulated on a MWh basis with one (1) REC for each MWh of Renewable Energy generated.

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For purposes of this Contract, RECs include all Renewable Energy Attributes associated with the generated energy. "Renewable Energy Certificate" or "REC" excludes (i) any local, state or federal investment tax credit, production tax credit, depreciation deductions or other tax benefit based on ownership of, or wholesale market sale of energy production from, the Renewable Energy Facilities, including the Tax Credits, and (ii) depreciation and other tax benefits arising from ownership or operation of the Renewable Energy Facilities unrelated to its status as a generator of renewable or environmentally clean energy.

"**Renewable Energy Facilities**" means the Solar Facilities and any other facilities for producing Renewable Energy, whether developed by PNM or a third party.

"**Renewable Portfolio Standard**" means the requirements set forth in the Renewable Energy Act, and implementing regulations (including NMPRC Rule 17.9.572 NMAC), as either may be amended from time to time.

"**Replacement RECs**" means RECs sourced by PNM from the market or its own portfolio, with the same vintage year as the time of the applicable curtailment, from a renewable energy project that declared commercial operation after December 31, 2019, and from resources in locations prioritized as follows: (1) New Mexico; (2) states bordering New Mexico and interconnected to the Western Electric Coordinating Council system ("WECC"); and (3) otherwise interconnected to WECC.

"**Representatives**" has the meaning set forth in **Section 11**.

"**Solar Facilities**" means the electric solar facilities as more particularly described in **Section 3.1.1**, to be constructed, owned and operated by an Affiliate of PNM at one or more Solar Facilities Sites, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at such facility.

"**Solar Facilities Site**" means the real property on which one of the Solar Facilities is, or will be located, as further described in **Section 3.1.1**.

"**Special Service Rate**" has the meaning set forth in **Section 5**.

"**SSC Energy Resource**" means an SSC Resource that is not a SSC Storage Resource.

"**SSC Resource**" means any energy generation or storage, or capacity, resource contracted with by PNM on Customer's behalf pursuant to this Contract.

"**SSC Resource Procurement**" means an Initial Solar Facilities PPA or an Additional Renewable Energy Procurement.

"**SSC Storage Resource**" means an SSC Resource that is an Alternative Capacity Project capable of being charged and discharged.

"**SSC Storage Resource Capacity Value Factor**" means the percentage applied to an SSC

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Storage Resource's nameplate capacity for purposes of determining the Production Revenue Requirement Offset. The value is 78% for all SSC Storage Resources filed for NMPRC approval prior to December 31, 2025 (even if not yet approved by NMPRC by this date), and this value shall endure as a fixed value for the life of each applicable ESA. For any SSC Storage Resources filed for NMPRC approval on or after December 31, 2025, the percentage applied shall (1) mutually agreed in writing by the parties as early as practicable during a procurement process as described in **Section 3**, (2) be consistent with appropriate industry capacity evaluation methods for comparable storage resources, and (3) endure as a fixed value for the life of each applicable ESA. The value agreed by the Parties shall not be subject to change as part of a reconciliation utilizing Rider 49 – Production Cost Allocation Rider. The SSC Storage Resource Capacity Value Factors for all SSC Storage Resources shall be utilized in establishing Customer's rates in any general rate case after the Effective Date of this Contract.

"**System Supplied Energy**" means energy provided to Customer through other energy resources available to PNM for overall system needs during hours when energy sourced from SSC Resources, including energy discharged from SSC Storage Resources, is not sufficient to meet the hourly energy needs of the Customer.

"**Tax Credits**" means investment tax credits under Section 48 of the U.S. Internal Revenue Code of 1986, as amended, or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from renewable energy resources of the type used to generate Renewable Energy and/or any federal, state or local investment tax credit or federal, state or local production tax credit determined by reference to renewable electric energy produced from renewable energy resources in effect in the State of New Mexico.

"**Term**" has the meaning used in **Section 4**.

"**Test Period Revenue**" means the amount of revenue that is forecast to be collected from each rate class at NMPRC-approved rates, which may differ from the Cost-Based Allocated Revenue Requirement for that rate class.

"**Third Party PPA**" has the meaning used in **Section 3.1.2**.

**"Third Party ESA**" has the meaning used in **Section 3.1.2**.

"**Transmission Revenue Requirement**" is the NMPRC-approved Test Period Revenue associated with transmission related costs included in the Company's cost of service study in the corresponding rate case filing.

"**Uncontrollable Forces**" means any cause beyond the reasonable control of the Party affected and not due to its fault or negligence, including, but not limited to, acts of God, flood, earthquake, storm, fire, lightning, epidemic, war, terrorist activity, riot, civil disturbance, sabotage, inability to obtain permits, licenses, and authorizations from any Governmental Authority for any of the materials, supplies, equipment, or services required to be provided hereunder, fuel shortages, breakdown or damage to generation and transmission facilities belonging to PNM or any of its Affiliates, failure of facilities, strikes or other labor disputes, or restraint by court or Governmental

Authority, any of which by exercise of due foresight such Party could not reasonably have been expected to avoid, and which by the exercise of due diligence it is unable to overcome. Uncontrollable Force also includes Force Majeure Event under the applicable SSC Resource Procurement. Under no circumstances shall the following constitute an Uncontrollable Force: (a) a Party's ability to enter into a contract at a more favorable price or under more favorable conditions or other economic reasons, or (b) delays or nonperformance by suppliers, vendors or other third parties with whom a Party has contracted, except to the extent that such delays or nonperformance were due to circumstances that would constitute Uncontrollable Forces. The term "Uncontrollable Forces" does not include outages to the extent such are not caused or exacerbated by an Uncontrollable Force.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking and reporting system adopted for purposes of the Renewable Portfolio Standard.

1.2 Rules of Construction. Unless the context of this Contract otherwise clearly requires, (i) references to the plural include the singular, (ii) references to the singular include the plural, (iii) references to one gender include the other gender, (iv) the terms "include," "including" and similar terms are not limiting and have the inclusive meaning represented by the phrase "including without limitation," (v) the term "or" is not exclusive, (vi) the terms "hereof," "herein," "hereunder," "hereto" and similar terms in this Contract refer to this Contract as a whole and not to any particular provision of this Contract, (vii) the terms "day" and "days" mean and refer to calendar day(s) and (viii) all references to "dollars" or "$" shall mean U.S. dollars. Unless otherwise set forth herein, references in this Contract to (i) any document, instrument or agreement (including this Contract) (A) include and incorporate all exhibits, schedules, disclosure schedules and other attachments thereto, (B) include all documents, instruments or agreements issued or executed in replacement thereof and (C) mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time, and (ii) a particular law, regulation or ordinance means such law, regulation or ordinance as amended, modified, supplemented or succeeded, from time to time and in effect at any given time and all rules and regulations promulgated thereunder, unless the context requires otherwise. All Article, Section, Exhibit and Schedule references herein are to Articles, Sections, Exhibits and Schedules of this Contract, unless otherwise specified.

## 2. CONDITIONS PRECEDENT

Except as otherwise set forth herein, the obligations of the Parties under this Contract are subject to NMPRC Approval. NMPRC Approval shall be considered received when the NMPRC issues a final written order that is not contested or is no longer subject to appeal or further proceedings on remand and either (i) approves this Contract, the Production Cost Allocation Rider, any requested changes to the Special Service Rate and the Green Energy Rider, and any requested variances; or (ii) approves any of the items in (i) in part or subject to conditions or substantial modifications, *provided*, that each of Customer and PNM agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as set forth in **Section 6.2** (collectively, "**NMPRC Approval**"). The terms and conditions of the Second

Amended Contract shall continue to apply until NMPRC Approval of this Contract is received.

## 3. PNM'S PROCUREMENT OF RENEWABLE RESOURCES FOR DIRECT ASSIGNMENT TO CUSTOMER'S DATA CENTER

3.1 Procurement of Renewable Resources. At Customer's direction and discretion, PNM shall procure from Renewable Energy Facilities or Alternative Capacity Projects capacity and energy to meet Customer's load at the Data Center by securing Additional Renewable Energy Procurements at reasonable cost and on terms mutually acceptable to both PNM and Customer, the costs of which shall be directly assigned to serve Customer's load, subject to NMPRC approval. PNM and Customer shall in good faith use commercially reasonable efforts to cooperate in the timely procurement of such energy and capacity and shall consider the optimal blend of resources as determined by PNM and Customer under **Section 3.1.3** below.

3.1.1 Initial Solar Procurement. As of August 21, 2018, PNM procured a total of thirty (30) $MW_{AC}$ of capacity and energy from Solar Facilities in PNM's service area to meet Customer's load at the Data Center by entering into three twenty-five (25) year PPAs with a PNM Affiliate (each, an "**Initial Solar Facilities PPA**"), consistent with the requirements of **Section 3.1** and **Section 6.1** of the Original Contract and approved in Case No. 16-00191-UT. No initial Solar Facility had capacity greater than twenty (20) MW. Customer had the right to review the siting of the Solar Facilities to be developed pursuant to the Initial Solar Facilities PPAs.

3.1.2 Additional Renewable Energy Procurements. Upon Customer's Notice to PNM, PNM and Customer will identify and evaluate the costs and benefits of Additional Renewable Energy Procurements to provide the capacity and energy required to serve the Data Center's projected load in excess of what is provided under the Initial Solar Facilities PPAs and agree on any Additional Renewable Energy Procurements, through a PPA, ESA, other contractual arrangement, or PNM ownership consistent with the requirements in **Section 3.1** and subject to NMPRC approval. Such Additional Renewable Energy Procurements shall be limited to the additional projected annual energy consumption of the Data Center. If the Parties agree on an Additional Renewable Energy Procurement by PPA or ESA, terms of such agreement that are substantially similar to those of the third party PPAs or ESAs attached hereto as **Exhibit B** (respectively, "**Third Party PPAs**" and **"Third Party ESAs**") shall be deemed acceptable, and PNM shall, at Customer's request, enter into such additional PPA or ESA, as applicable, the costs of which shall be directly assigned to Customer, and submit it for approval to the NMPRC. Notwithstanding anything to the contrary in this Contract, (a) PNM will not be required to incur any unreasonable costs in the process of negotiating, entering into, or seeking regulatory approval of, any Additional Renewable Energy Procurement; (b) PNM shall have authority to approve any Additional Renewable Energy Procurement, which approval shall not be unreasonably withheld; and (c) Additional Renewable Energy Procurements shall result in No Net Adverse Impact as defined in this Contract.

3.1.3 Procurement Process. PNM and Customer will work collaboratively, expeditiously and in good faith to complete the following actions during the period

beginning on the date Customer provides Notice to PNM under **Section 3.1** of this Contract and ending nine (9) months later, or such other period determined by mutual agreement of the Parties: (a) within one (1) month, identify the additional SSC Resources required, taking into account the optimal blend of renewable resources to serve the Data Center's incremental load that minimizes the generation cost allocation to Customer for purposes of setting the Special Service Rate; (b) within three (3) months, complete a request for proposals or other appropriate process for selecting the providers of the additional SSC Resources; (c) within six (6) months, enter into and complete negotiations for the SSC Resource Procurement; (d) within eight (8) months, develop a schedule for construction and a target in-service date for additional SSC Resources and make appropriate regulatory filings relating to the SSC Resource Procurements; and (e) within nine (9) months, obtain all necessary permits and approvals to complete the SSC Resource Procurements or, if applicable, commence construction of the additional Renewable Energy Facilities. Notwithstanding the foregoing objectives, if PNM is unable to complete the tasks and activities specified within subsections (d) and (e) in this **Section 3.1.3** only, and such delay is due to the failure to receive final interconnection or transmission studies or other approvals that are required for PNM to complete such objectives, then the deadline for the tasks and activities specified above in subsections (d) and (e) only shall be automatically extended on a day-for-day basis (i.e., one day for each day PNM is unable to achieve such objectives). PNM shall not be entitled to an extension, however, for any delay that is within PNM's reasonable control or is otherwise caused by PNM or its Affiliates' own delay or breach of contractual arrangements with one or more third parties.

3.1.4 Siting of Additional Renewable Energy Procurements. PNM and Customer will work collaboratively, expeditiously and in good faith to site the renewable energy resources for SSC Resource Procurements in locations that will avoid constraints on PNM's transmission system.

3.2 RECs; WREGIS Registration. All RECs attributable to energy generated for Customer under the SSC Resource Procurements shall be registered with WREGIS and solely dedicated to Customer's account. For Customer's usage at the Data Center that exceeds the energy actually supplied under the SSC Resource Procurements, PNM shall procure, at Customer's discretion and sole expense and on a least-cost basis, an amount of RECs equal to such usage; at Customer's request, PNM shall procure such RECs from Renewable Energy Facilities with characteristics as similar as possible to those supplying RECs under the SSC Resource Procurements (*e.g.*, by resource and location). PNM shall transfer all RECs procured to Customer's WREGIS account in accordance with applicable WREGIS rules and requirements. Upon request by Customer, PNM shall retain the RECs in PNM's WREGIS account and retire them on Customer's behalf in accordance with applicable WREGIS rules and requirements. All RECs, including Renewable Energy Attributes, associated with energy supplied to Customer shall be solely dedicated to Customer. Without limiting the foregoing, none of the RECs, whether retired by Customer or by PNM, shall be used for Renewable Portfolio Standard compliance by any utility, including PNM. Customer will be responsible for the cost of registration, retirement and, if required, transfer of the RECs in WREGIS, all of which costs are separate from the billing rates set forth in this Contract.

3.3 Electric Facilities. Transmission system upgrades may, from time to time, be required to provide electric service to meet Customer load, the costs of which that are directly attributable to upgrades that can only be used by Customer shall be recovered by PNM through direct reimbursement by Customer under separate Electric Facilities Agreement(s) or Reimbursement Agreement(s) between Customer and PNM.

## 4. TERM

This Contract shall be in full force and effect, enforceable and binding in all respects, upon the Effective Date. The term of this Contract shall commence upon the Effective Date and shall end upon the latest occurrence of termination under an SSC Resource Procurement then in effect ("**Term**"), subject to NMPRC approval to the extent required by **Section 6** and early termination provisions as set forth in this Contract. Except as otherwise agreed between the Parties, this Contract is not subject to extension or renewal and shall automatically terminate at the end of the Term.

## 5. BILLING RATES

Monthly charges for electric service by PNM to Customer under this Contract will include: PNM Rate No. 36B - Special Service Rate—Renewable Energy Resources ("**Special Service Rate**"), PNM Rider No. 47 – Green Energy Rider, PNM Rider No. 49 – Production Cost Allocation Rider, and other applicable riders, as set forth in this **Section 5**. Except for the terms and conditions in this Contract and the Green Energy Rate, all rates and charges applicable to Customer shall be subject to adjustment in PNM general rate cases; provided that rates charged under applicable riders shall be adjusted in accordance with the terms of those riders, and the fuel factor shall be adjusted as described in PNM Rate Rider No. 23 at the same time as Rate Rider No. 23 is adjusted.

5.1 Green Energy Rider. The green energy rider attached to this Contract as **Exhibit C** allows PNM to enter into this Contract with Customer to procure energy resources to meet Customer's need for electric energy, including procurements to satisfy Customer's sustainability goals, as its load grows over time, and provide the other services necessary to satisfy Customer's estimated peak capacity and energy requirements, on an annual basis, and recover all of the reasonable costs of providing those services to Customer so that this Contract will have No Net Adverse Impact as the term No Net Adverse Impact is defined in this Contract ("**Green Energy Rider**").

5.1.1 The rate under the Green Energy Rider is comprised of a pass-through to Customer of the cost of the SSC Resource Procurements for Customer executed pursuant to this Contract (collectively, "**Green Energy Rate**").

5.1.1.1 The Green Energy Rate shall be designed to allow PNM to recover from Customer the reasonably incurred costs of the SSC Resource Procurements, in accordance with the provisions set forth in the Green Energy Rider. Such costs shall not include those associated with interest charges, penalties, payments, or other costs incurred by PNM due to its failure to comply with the terms of any SSC Resource Procurement, which failure was not caused by Customer. The Green

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Energy Rate also shall be designed to pass through to Customer the value of any incentives, grants, credits and other benefits obtained by PNM under any SSC Resource Procurement.

5.1.1.2 The Green Energy Rider shall provide that Customer's Special Service Rate shall be designed in a manner that takes into account the capacity contribution of the SSC Resources to PNM's system and the value of energy actually produced or discharged on an hourly basis by those SSC Resources to PNM's system that exceeds Customer's energy demand and SSC Resources energy storage capability by providing that PNM shall credit Customer the Excess Energy Production Credit for all Excess Energy.

5.1.1.3 In the event of a delay or failure of an SSC Resource supplying energy, capacity or RECs under an SSC Resource Procurement, the Green Energy Rider shall ensure that the cost to supply Customer's load and the equivalent amount of RECs from alternative sources is offset by the amount of proceeds of any liquidated damages payments, credit support or other compensation actually received by PNM under such SSC Resource Procurement.

5.1.1.4 In the event of a conflict or contradiction between the terms of this Contract and the Special Service Rate, Green Energy Rider or the Green Energy Rate, the terms of this Contract shall control.

5.1.2 Determination of No Net Adverse Impact. There is No Net Adverse Impact if the Test Period Revenue projected from Customer during the Company's Test Period equals or exceeds (a) the separate class Cost-Based Allocated Revenue Requirement Company is required to undertake for each Rate 36B customer in each general rate proceeding minus (b) the Production Revenue Requirement Offset Subsidy.

5.2 Special Service Rate Schedule.

5.2.1 Customer will be billed for certain charges through the Special Service Rate, set forth in **Exhibit D1**.

5.2.1.1 Charges under the Special Service Rate will include recovery of Customer's allocated share of customer costs, transmission costs, System Supplied Energy costs, and energy-related non-fuel costs. These charges will be subject to adjustment in PNM general rate cases, and the fuel factor will be adjusted as described in PNM Rate Rider No. 23 at the same time as Rate Rider No. 23 is adjusted.

5.2.1.2 [Reserved].

5.2.1.3 The Parties agree to meet and confer to amend the methodology set forth in **Exhibit D1** if, in a future rate case, the NMPRC approves an alternate Production Revenue Requirement allocation methodology for all retail classes. The

Parties agree to adhere to the principles set forth in **Exhibit I** in such negotiations.

5.3 Production Cost Allocation Rider. **Exhibit H** ("**Production Cost Allocation Rider**") is for PNM to recover from Customer the amount of any under-collection resulting from the reconciliation of the Production Revenue Requirement Offset. When an under-collection of Customer's revenue contribution to PNM's production costs described in **Section 5.2.1.3** is deemed to have occurred, PNM shall recover through the Production Cost Allocation Rider the actual under-recovery of production costs. PNM will bill Customer the under-collected amounts each month until reset in a general rate case.

5.4 Other Applicable Riders.

5.4.1 Renewable Energy Rider. Rider No. 36 – Renewable Energy Rider, is applicable to Customer to the extent required under the Renewable Energy Act.

5.4.2 Energy Efficiency Rider Inapplicable. PNM agrees that Customer is not eligible to participate in PNM's current NMPRC-approved energy efficiency programs.

5.4.3 Other Rate Riders. Customer shall be subject to any other applicable rate riders according to their terms unless expressly excluded. Allocations to Customer under any rider recovering current or historical production costs will be based on Customer's load minus energy and capacity from the SSC Resource Procurements as determined in the applicable NMPRC-approved PNM tariff. PNM shall serve on Customer any application requesting NMPRC approval of any new rate rider, or changes to any existing rate rider, not including routine rider rate adjustments, that would go into effect after the Effective Date and apply to the Special Service Rate.

## 6. REGULATORY FILINGS

6.1 NMPRC and FERC Filings.

6.1.1 PNM shall timely prepare and file for submission and approval by the NMPRC an application for approval of this Contract, amendments to the Special Service Rate, amendments to the Green Energy Rider, and any required variances.

6.1.2 PNM shall timely prepare and file for submission and acceptance by FERC, as required, Form 556, Notice of Self-Certification of a qualifying facility, and an application for acceptance of any Additional Renewable Energy Procurements, if required.

6.2 Modifications to Filings. If the NMPRC, in an order addressing any of the filings made by PNM pursuant to **Section 6.1**, modifies or eliminates a material term or condition or imposes a material new term or condition unacceptable to either Party, PNM and Customer shall renegotiate, in good faith, the relevant terms of this Contract with a view towards preserving the intended benefits and burdens of the original bargain struck between the Parties. If the Parties are unable to reach a mutually-agreeable resolution within thirty (30) days after issuance of such NMPRC order, or such other period as the Parties may determine, then either Party may terminate

this Contract upon Notice to the other, subject to the Default and Termination provisions of this Contract.

## 7. BILLING AND PAYMENT

7.1 Monthly Charges. PNM shall present Customer with a single bill that contains all applicable rates, charges, taxes and fees under the Green Energy Rider and Special Service Rate, as applicable, and Customer shall make a single monthly payment to PNM. The timing of invoicing and payment will otherwise be subject to the terms of PNM's Rules 5 through 9.

7.2 Payment Method. Customer shall pay PNM by check or electronic funds transfer, to be received by PNM pursuant to the payment terms applicable to Customer's base charges under the Special Service Rate.

7.3 Interest. Delinquent payments shall be subject to penalty pursuant to the terms of PNM's applicable rules and tariffs.

7.4 No Duplication. Neither Customer nor PNM shall be liable under this Contract to make any payment of amounts due to the other (or for which Customer or PNM has paid in advance) if and to the extent that the Party to which payment is due has otherwise actually received payment from one or more sources, provided that the amount of payments received is for the amount due and the payments received are for the same purpose as the payments due.

## 8. PHYSICAL MATTERS

8.1 Curtailments. PNM curtailment of SSC Resources shall be pursuant to the provisions of this Contract and the Third Party PPAs. The Third Party PPAs may be amended only by the mutual written agreement of Customer and PNM. Customer and PNM agree to review and discuss performance hereunder and under the Third Party PPAs, and to identify mutually agreeable PNM practice modifications, as requested by either Party, where such request will not be unreasonably denied. PNM shall pay any compensation due to the seller under any Third Party PPA for curtailment of energy, and for any and all such curtailments, and only for such curtailments: Customer will pay to PNM the fixed price for energy and RECs in the Third Party PPA for the times of such curtailments; PNM shall bear the remaining costs, and have all of the remaining benefits thereof; and only for curtailments with respect to which PNM is obligated to pay compensation to the seller under a Third Party PPA for such curtailment, PNM will supply Replacement RECs to Customer in the quantity of the estimated energy that was not delivered on account of such compensable curtailment, at no additional cost to Customer. Customer shall receive System Supplied Energy for such curtailed periods without additional cost to Customer as if the SSC Resource had generated and delivered energy to PNM. For any such curtailment, PNM shall prudently consider use of storage resources (including SSC Storage Resources), the payments (including any payment of the fixed price for energy by Customer) and the value of any foregone RECs and the cost of any Replacement RECs as required in this Section 8.1 as a part of any decision to curtail an SSC Resource which results in PNM being required to pay compensation to Seller thereunder, just as it is obligated to prudently do so when acting on behalf of all its customers (including Customer) when curtailing non-SSC Resources.

8.1.1 Curtailments To Be Non-Discriminatory. PNM shall curtail SSC Resources, taken as a whole and consistent with safe and reliable system operations, in accordance with existing contracts and in an equitable and non-discriminatory manner.

8.1.2 Event documentation. PNM shall document each curtailment event, including the reason for the curtailment, the directed actions for each specified resources or group of resources, and the start, end, and duration of such directed actions. PNM shall provide to Customer monthly reports, on a semi-annual basis or as requested by Customer, of such curtailments. PNM shall evaluate such reports with a view towards applying the information set forth therein to ensure minimization of curtailment of SSC Resources and curtailments on a non-discriminatory basis.

8.2 Energy Deemed Deliveries.

8.2.1 PNM shall not schedule for delivery output or capacity provided to PNM from SSC Resources into any Claiming Jurisdiction, via EIM or EDAM, any energy imbalance market, resource adequacy transaction or commitment, bilateral transaction, or otherwise such that it is Deemed Delivery.

8.2.2 PNM shall not schedule for delivery output or capacity provided to PNM from an SSC Resource Procurement, outside of PNM's balancing authority area in any manner that could interfere with or contravene Customer's exclusive rights to make the claims with respect to the environmental attributes of any SSC Resource it has purchased through the SSC or reduce the number of RECs delivered to Customer by the SSC Resource (i.e., by virtue of such delivery as opposed to potential reduction of output).

8.2.3 PNM may register an SSC Resource as a "specified source of electricity" with the California Air Resources Board under California's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 *et seq*.), or with another jurisdiction under that jurisdiction's greenhouse gas reporting regulations, for purposes of submitting the SSC Resource in the EIM or EDAM as a participating resource if required by the market operator, but shall not suffer a sale of energy or capacity from such SSC Resource in any manner that would cause it to clear the market as a "specified source of electricity" into a Claiming Jurisdiction.

8.2.4 If there is a change in any Applicable Law, any interpretation of Applicable Law by a Governmental Authority, or any policy of a Governmental Authority, market tariffs, rules, or procedures, or a change in interpretation of the preceding, such that any person or entity, Governmental Authority or otherwise, other than Customer is potentially able to make claims to the Customer's environmental attributes, PNM shall promptly cease offering such SSC Resource as dispatchable in the real time market and notify Customer of such change, the estimated impact, if any, and PNM's plan to remedy any claims made by the other person or entity.

8.3 Regional Markets. Formation of one or more Regional Markets and PNM's

participation in a Regional Market may require review of potential impacts, and negotiation of changes to, Third Party PPAs.

8.3.1 The Parties shall engage in good faith negotiations to amend this Contract or to support changes to the Third Party PPAs to remove material impediments to PNM's participation in the Regional Market by allocating the resulting changed risks, responsibilities and costs to reflect as closely as possible the benefits and burdens of this Contract as they existed on the date it became effective; and

8.3.2 PNM shall provide Customer with all data and information Customer may reasonably request regarding PNM's potential participation in such Regional Market, except to the extent prohibited by law or by confidentiality agreements, provided that PNM shall make reasonable efforts to obtain the right for Customer to review such data and information and grant reasonable Customer requests to delay negotiations if material data is not yet available to Customer.

8.4 Charging and Discharging SSC Storage Resources.

8.4.1 PNM shall control the charging and discharging of SSC Storage Resources for PNM system requirements, subject to the provisions of this Contract.

8.4.2 PNM shall make reasonable efforts to utilize all storage resources in a manner that alleviates curtailment of renewable resources.

8.4.3 In charging and discharging SSC Storage Resources, PNM shall abide by any warranty restrictions or other terms of the Third Party ESAs.

8.4.4 PNM and Customer have agreed on principles for determining the Contribution to Production Offset for SSC Storage Resources in **Exhibit I** that will be implemented in a subsequent amendment to this Contract following or in connection with PNM's next general rate case.

8.5 Uncontrollable Forces. Neither Party will be in default in respect to any obligation hereunder if delays in or failure of performance is due to Uncontrollable Forces, except for the obligation to pay monies due. Neither Party, however, will be relieved of liability for failure of performance if such failure is due to removable or remediable causes which it fails to remove or remedy with reasonable dispatch. Moreover, nothing contained in this Contract will be construed to require either Party to prevent or settle a strike or other labor dispute against its will. The Party whose performance is affected by an Uncontrollable Force, including any potential curtailment of electric service, must immediately notify the other Party of all pertinent facts and take all reasonable steps to promptly and diligently prevent such causes if feasible to do so, or to minimize or eliminate the effect thereof without delay.

## 9. EVENTS OF DEFAULT: REMEDIES

9.1 Customer Events of Default. Unless otherwise provided in PNM's applicable Commission-approved tariffs, Customer will be in material default of its obligations under this

Contract upon the occurrence of any one or more of the following events of default (each, a "**Customer Event of Default**"):

9.1.1 Customer becomes Bankrupt;

9.1.2 Any material representation or warranty made by Customer in this Contract was materially false or misleading when made, and Customer fails to remedy such false or misleading representation or warranty and fails to make PNM whole for any consequences thereof within thirty (30) days after Customer receives a Notice from PNM;

9.1.3 Customer assigns or transfers this Contract or any right or interest in this Contract, except as expressly permitted under **Section 14**;

9.1.4 Customer fails to perform or observe in any respect any provision of this Contract providing for the payment of money that is owed to PNM under this Contract or any other material provision of this Contract not otherwise addressed in this **Section 9.1.4**, and such failure continues for twenty (20) days in the case of a payment obligation or thirty (30) days in the case of any other obligation, except such thirty (30) day period shall be extended if (a) curing such failure reasonably requires more than thirty (30) days, (b) Customer commences such cure within such thirty (30) day period and diligently prosecutes such cure, and (c) such cure is accomplished within seventy-five (75) days, in each case after Customer receives a Notice from PNM;

9.1.5 A guarantor fails to make, when due, any payment required or to perform any other material covenant or obligation in the guaranty, or the guaranty expires, is terminated, or is not otherwise maintained in full force and effect, prior to satisfaction of Customer's obligations under this Contract.

9.2 PNM's Rights and Remedies. In the event of an uncured Customer Event of Default, subject to **Section 10**, Limitations of Liabilities, PNM or its successors or assigns shall have the following rights and remedies, in addition to any other rights and remedies that may be available to PNM or its assignees under this Contract and Applicable Law, and Customer shall have the following obligations:

9.2.1 PNM, without prejudice to any of its other rights or remedies, may terminate this Contract by delivery of Notice to Customer; and

9.2.2 PNM may seek equitable relief to cause Customer to take action or to refrain from taking action pursuant to this Contract.

9.3 PNM Events of Default. PNM shall be immediately in default of its obligations pursuant to this Contract upon the occurrence of any one or more events of default below (each, a "**PNM Event of Default**"):

9.3.1 PNM becomes Bankrupt;

9.3.2 Any material representation or warranty made by PNM herein was materially false or misleading when made, and PNM fails to remedy such false or misleading representation or warranty and to make Customer whole for any consequences thereof within thirty (30) days after PNM receives a Notice from the Customer with respect thereto;

9.3.3 PNM assigns or transfers this Contract or any right or interest herein, except as expressly permitted under **Section 14**; or

9.3.4 PNM fails to perform or observe in any respect any provision of this Contract providing for the payment of money that is owed to Customer under the terms of this Contract (other than payments of money subject to good faith disputes) or any other material provision of this Contract not otherwise addressed in this **Section 9.3.4**, and such failure continues for ten (10) days in the case of such a payment obligation or thirty (30) days in the case of any other obligation, except such thirty (30) day period shall be extended if: (a) curing such failure reasonably requires more than thirty (30) days, (b) PNM commences such cure within such thirty (30) day period and diligently prosecutes such cure, and (c) such cure is accomplished within seventy-five (75) days, in each case after PNM receives a Notice from Customer with respect thereto.

9.4 Customer's Remedies. In the event of an uncured PNM Event of Default and subject to **Section 10**, Limitations Liabilities, Customer shall have the following remedies:

9.4.1 Terminate this Contract by delivery of Notice to PNM; and

9.4.2 Avail itself of any other rights and remedies that may be available to Customer or its assignees under this Contract and Applicable Law, including any equitable remedy to enforce the obligations of PNM under this Contract.

9.5 Other Termination. This Contract also may be terminated in accordance with the provisions set forth below:

9.5.1 Change in Law. This Contract shall terminate automatically if PNM is required by any law, rule, order, or regulation to cease providing the services it is required to provide under this Contract, or if PNM or Customer is required by any law, rule, order or regulation to cease performing the obligations it agrees to perform pursuant to this Contract.

9.5.2 [Reserved].

9.5.3 Extended Uncontrollable Forces. Either Party may terminate this Contract upon Notice, which termination shall be effective five (5) Business Days after such Notice is given, if the delay in or failure of performance caused by Uncontrollable Forces extends for more than three hundred sixty-five (365) consecutive days.

9.6 Early Termination Payment. If this Contract is terminated or caused to be

terminated for any reason other than a PNM Event of Default (a) after the satisfaction of the conditions precedent in **Section 2** and (b) before the end of the Term, Customer shall pay to PNM an early termination payment ("**Early Termination Payment**"), which is intended to cover PNM's financial obligations arising under the SSC Resource Procurements. The methodology for determining the Early Termination Payment is set forth in **Exhibit E**, attached hereto. PNM shall use all commercially reasonable efforts to mitigate any such financial obligations. Customer shall pay PNM the Early Termination Payment as set forth in **Exhibit E**.

## 10. LIMITATIONS OF LIABILITIES

10.1 Limit on Warranties. EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS CONTRACT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS CONTRACT SATISFY THE ESSENTIAL PURPOSES HEREOF.

10.2 Direct Damages. Subject to **Section 15.6**, if no remedy or measure of damages is expressly provided herein, 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. Unless expressly provided in this Contract, including without limitation the provisions of **Section 13** (Indemnification), neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise.

10.3 Liquidated Damages. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or damages.

## 11. TAXES

Customer will be liable for and will pay, and will indemnify, defend, and hold harmless PNM and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel (collectively, "**Representatives**") from and against, any and all taxes and contributions or any interest accrued and penalties imposed, and reasonable attorney fees excises, assessments, and other charges levied by any Governmental Authority on Customer with respect to or because of this Contract and the electric service provided hereunder. All invoices issued by PNM for electric service will separately show all New Mexico gross receipts, compensating, sales, and other similar taxes properly charged to Customer.

## 12. REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties. On the Effective Date, each Party represents, warrants and covenants to the other Party that:

12.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

12.1.2 Except for the approval of the NMPRC, in the case of PNM, it has or to its knowledge expects to timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Contract;

12.1.3 The execution, delivery and performance of this Contract are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

12.1.4 This Contract constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

12.1.5 There is not pending, or to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under this Contract;

12.1.6 No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Contract;

12.1.7 It is acting for its own account and its decision to enter into this Contract is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party, and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Contract; and

12.1.8 It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Contract in deciding to enter into this Contract.

## 13. INDEMNIFICATION

13.1 By Customer. Customer shall defend, indemnify, and hold harmless PNM and any Person acting for or on behalf of PNM, and each of their respective employees, agents, partners, Affiliates, shareholders, directors, officers, and assigns (each a "**PNM Indemnitee**"), from and against all Losses that arise out of or result from:

13.1.1 any negligent, reckless, or otherwise tortious act or omission (including strict liability) during the performance of its obligations under this Contract, of Customer or any Affiliate thereof, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, but only to the extent not caused or resulting from the negligent, reckless, or otherwise tortious act or omission of the PNM Indemnitees or any other third party for which Customer is not responsible;

13.1.2 personal injury or death of a third person, but only to the extent not caused or resulting from the negligent, reckless, or otherwise tortious act or omission of the PNM Indemnitees or any other third party for which Customer is not responsible; and

13.1.3 the breach or default of any obligation, representation or warranty of Customer under this Contract to the extent such Losses arise out of or result from any demand, claim, litigation, action, suit or proceeding by a Person other than either of the Parties or PNM Indemnitees.

13.2 By PNM. PNM shall defend, indemnify, and hold harmless Customer and any Person acting for or on behalf of Customer and each of their respective employees, agents, partners, Affiliates, shareholders, directors, officers, and assigns (each a "**Customer Indemnitee**") from and against all Losses that arise out of or result from:

13.2.1 any negligent, reckless, or otherwise tortious act or omission (including strict liability) during the performance of its obligations under this Contract, of PNM or any Affiliate thereof, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, but only to the extent not caused or resulting from the negligent, reckless, or otherwise tortious act or omission of the Customer Indemnitees or any other third party for which PNM is not responsible;

13.2.2 personal injury or death of a third person, but only to the extent not caused or resulting from the negligent, reckless, or otherwise tortious act or omission of the Customer Indemnitees or any other third party for which Customer is not responsible; and

13.2.3 the breach or default of any obligation, representation or warranty of PNM under this Contract to the extent such Losses arise out of or result from any demand, claim, litigation, action, suit or proceeding by a Person other than either of the Parties or Customer Indemnitees.

## 14. ASSIGNMENT

14.1 Assignment by Customer. Customer may, at its option and at any time, assign this Contract, in whole or in part to (a) an Affiliate of Customer, or (b) any person or entity succeeding to all or substantially all of Customer's assets; provided, in the case of an assignment to an Affiliate or other assignee with a Market Cap of less than USD $100,000,000,000 (one hundred billion dollars), such assignee shall deliver to PNM a guaranty to secure the payment and performance when due of its obligations under this Contract. The guaranty shall continue in full force and effect until all such obligations have been discharged. The guaranty shall be in all material terms the same as set forth on **Exhibit F** and shall be issued by a guarantor that (a) has an unsecured senior long-term debt rating of "BBB-" or better by S&P Global and "Baa3" or better by Moody's Investors Service, Inc. (or, if both are not available, comparably determined ratings from one or more alternate rating sources acceptable to PNM), or (b) has **Market Cap** that is no less than USD $100,000,000,000 (one hundred billion dollars). "**Market Cap**" means the market capitalization of an entity, calculated as the share price (determined by using the closing price for the applicable trading day) times the number of shares outstanding.

14.2 Assignment by PNM. PNM may, at its option and at any time, assign this Contract, in whole or in part to an Affiliate of PNM due to a reorganization of any assets, business function or structure of PNM. Other than to an Affiliate, PNM shall not assign or transfer its interest in this Contract without first obtaining the written consent of Customer, which consent shall not be unreasonably withheld, conditioned or delayed.

## 15. TREATMENT OF CONFIDENTIAL INFORMATION

15.1 Definition. As used in this Contract, "**Confidential Information**" means any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Contract, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials. Confidential Information shall not include any information that: (a) is already in the public domain or which becomes public knowledge absent any violation of the terms of this Contract; (b) was already in the possession of a Party prior to disclosure by the other Party; (c) a Party obtains from another Person which such Party reasonably believes was not under an obligation of confidentiality; or (d) is or becomes generally available to, or is independently known to or has been or is developed by, any Party or any of its Affiliates or Representatives other than materially as a result of any disclosure of proprietary information by the disclosing Party to the receiving Party.

15.2 Confidentiality Obligation. Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in **Section 15.3** and **Section 15.4**, each receiving Party will (a) keep strictly confidential and take reasonable precautions to protect against the disclosure of (i) the terms and conditions and other facts with respect to this Contract and (ii) all Confidential Information, and (b) use all Confidential Information solely for the purposes of performing its obligations under this Contract and not for any other purpose; provided, a Party may disclose facts, terms and conditions referred to in clause (a) above and Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Contract if, prior to being told of such matters or being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Contract and are directed to comply with the requirements of this Contract. Each Party will be responsible for any breach of this Contract by its Representatives.

15.3 Disclosures to Governmental Authorities. Upon twenty (20) days prior Notice to Customer, PNM may disclose the terms, conditions or other facts with respect to this Contract and all Confidential Information furnished or made available by either Party pursuant to this Contract:

15.3.1 As required by Applicable Law, to any duly authorized Governmental Authority, including without limitation, the NMPRC, the FERC, and the Securities and Exchange Commission; provided, each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Contract by requesting confidential treatment to the extent appropriate and permitted by Applicable Law; and

15.3.2 To the extent necessary to comply with any Applicable Law or any discovery or data request of a party to any proceeding pending before any of the foregoing; provided, PNM shall, prior to any such disclosure by it, cooperate in good faith with Customer and use commercially reasonable efforts to seek confidential treatment by the Governmental Authority of the Confidential Information or other information disclosed to any of them by PNM under this **Section 15.3**. PNM shall have no liability whatsoever to Customer in the event of any unauthorized use or disclosure by a Governmental Authority of any Confidential Information or other information disclosed to any of them by PNM.

15.4 Compelled Disclosure.

15.4.1 If any Party or its respective Representatives become subject to a requirement of Applicable Law to disclose any Confidential Information, or any part thereof, or any other matter required by **Section 15.1** to be kept confidential, such Party (a) will promptly notify the other Party of the existence, terms, and circumstances of such requirements so that such other Party may seek an appropriate protective order or waive compliance with the provisions of this Contract, and (b) will, and will cause its Representatives to, cooperate fully with such other Party (at the expense of such other Party) in seeking a protective order or other assurance that confidential treatment will be accorded to the disclosed Confidential Information or other matter.

15.4.2 If a Party complies with **Section 15.4.1** but it or its Representatives are compelled, in the opinion of its legal counsel, to make disclosure in response to a requirement described in **Section 15.4.1** or else stand liable for contempt or suffer other penalty, the compelled Party may disclose only that portion of the Confidential Information which is legally required and will exercise commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information or other matter.

15.4.3 Disclosures by PNM pursuant to **Section 15.3** shall not be subject to the procedures of this **Section 15.4**.

15.5 Ownership and Return of Information. All Confidential Information shall be and remain the property of the Party providing it. No right or license is granted to the receiving Party respecting the use of such Confidential Information by virtue of this Contract, except to the extent required for Customer's performance of its obligations under this Contract or as expressly granted hereunder. Upon the request of a Party, all Confidential Information, including all written or recorded copies thereof, shall be promptly returned to the requesting Party or destroyed, and if destroyed, such destruction shall be certified in writing to the requesting Party by a responsible officer of the other Party; provided, however, the receiving Party may retain one copy of the disclosing Party's Confidential Information solely for legal and audit compliance purposes.

15.6 Enforcement. The Parties agree that irreparable damage would occur if the confidentiality obligations under this Contract were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party will be entitled to seek an injunction or injunctions to prevent breaches of this **Section 15** and to enforce specifically its provisions in any court of

competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.

15.7 Publicity.

15.7.1 Except as otherwise agreed to herein, no announcement or press release regarding the arrangement contemplated under this Contract, including the existence hereof, shall be made by either Party without the prior written approval of the other Party. In addition, without obtaining the other Party's prior written consent, a Party shall not, and shall cause its agents not to, engage in advertising, promotion or publicity containing non-public information concerning this Contract, or make public use of the other Party's identification in any circumstances related to this Contract or otherwise. As used in the preceding sentence, "identification" means any corporate name, trade name, trademark, service mark, insignia, symbol, logo or any other product, service or organization designation, or any specification or drawing owned by a Party or its Affiliates or any representation thereof.

15.7.2 PNM shall use commercially reasonable efforts in connection with each SSC Resource Procurement to obtain and grant to Customer the exclusive right to advertise, market, and promote to the general public the benefits of all the RECs that are generated under the SSC Resource Procurement and delivered to Customer during the Term, including but not limited to the right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from the creation, sale or retirement of such RECs (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**").

## 16. DISPUTE RESOLUTION

16.1 Mediation. If any dispute between the Parties arises under this Contract which cannot be resolved through negotiations between the Parties, a Party may request mediation by a mediator agreed to by both Parties. Costs of mediation shall be apportioned according to **Section 16.3**. Disputes that are not resolved by mediation within ninety (90) days of referral to mediation shall be resolved pursuant to **Sections 16.2** through **16.4;** provided, however, nothing **in Sections 16.2** through **16.4** shall prevent either Party from seeking resolution by the NMPRC of any dispute arising under this Contract that is within its jurisdiction or prevent either Party from seeking any remedy by the NMPRC within its jurisdiction through any procedure within the NMPRC's authority.

16.2 Arbitrable Disputes. The Parties acknowledge that arbitration is not available for disputes involving matters within NMPRC jurisdiction except as provided in 1.2.2.18 and 1.2.2.19 NMAC. If there is disagreement as to whether a dispute is within NMPRC jurisdiction, the parties shall seek a determination from the NMPRC whether the dispute is subject to its jurisdiction. The Parties may agree to arbitration pursuant to 1.2.2.18 and 1.2.2.19 NMAC of any dispute arising under this Contract that is within the NMPRC's jurisdiction.

16.3 Claims Outside the NMPRC's Jurisdiction. If the dispute involves a claim that is outside the NMPRC's jurisdiction and Parties are unable to resolve a dispute regarding such matters through mediation or any other remedies within the NMPRC's jurisdiction and the aggregate amount of the claim (including counterclaims) arising under this Contract is five hundred thousand dollars ($500,000) or less, then, upon the request of either Party, the dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the then-prevailing Commercial Rules of the American Arbitration Association. A Party electing to submit a dispute that is outside the NMPRC's jurisdiction to arbitration shall give the other Party a timely demand for arbitration and shall file the demand and the requisite fee with the American Arbitration Association. Such demand for arbitration shall describe the nature of the dispute and the amount in controversy. The Parties shall then jointly select a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held in Albuquerque, New Mexico. Discovery shall be by agreement of the Parties or as ordered by the arbitrator, provided that the Parties shall comply with the following minimum discovery requirements: at least one hundred twenty (120) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration, all documents in any way related to the dispute, a list of witnesses and a summary of the matters as to which each witness is expected to testify. A reasonable number of depositions may be taken. The arbitrator shall decide the dispute in strict accordance with this Contract and by providing a reasoned award within thirty (30) days of the conclusion of the hearings. The award entered by the arbitrator shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof. All costs of mediation and arbitration (including the fees of the mediator and arbitrator) shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel costs, witness fees, photocopying and similar costs. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico. Indemnity claims are not subject to mandatory arbitration. An arbitration demand shall include all claims and disputes then ripe for the dispute.

16.4 Litigation of Larger Claims. If the aggregate amount of the claims in any dispute that is outside of the NMPRC's jurisdiction arising under this Contract exceeds five hundred thousand dollars ($500,000), either Party may bring an action only in the federal or state courts of New Mexico; provided, however, that any matters within the jurisdiction of the NMPRC relating to such dispute shall first be brought to the NMPRC for resolution. If there is disagreement as to whether a dispute is within NMPRC jurisdiction, the parties shall seek a determination from the NMPRC whether the dispute is subject to its jurisdiction.

16.5 Continued Performance. The Parties agree that they will continue to diligently perform their obligations pursuant to this Contract during the pendency of any dispute, including any dispute over payments claimed due and owing by Customer.

## 17. NOTICE

17.1 Required Notices to Customer. PNM shall provide Notice to Customer as soon as reasonably practicable of any dispute, statement error, and other matter arising under an SSC Resource Procurement to the extent that it may affect the costs to be passed through to Customer under this Contract.

17.2 Method of Giving Notice. All Notices, requests, statements, invoices, or payments

shall be made as specified in **Exhibit G**. Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile.

17.3 When Notice Deemed Given. Notice provided in accordance with this **Section 17** shall be deemed given as follows:

17.3.1 Notice by facsimile, e-mail or hand delivery shall be deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be deemed given at the close of business on the next Business Day;

17.3.2 Notice by overnight United States mail or courier service shall be deemed given on the next Business Day after it was sent out; and

17.3.3 Notice by first class United States mail shall be deemed given three (3) Business Days after the postmarked date.

17.4 Effective Date of Notice. Notices shall be effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Contract. The requirement to give Notice shall not apply to matters relating to day-to-day operations.

17.5 Change in Information. A Party may change its designated representatives, addresses and other contact information at any time or from time-to-time by providing Notice to the other Party.

## 18. VARIANCE FROM 17.1.210.12(B) NMAC AND PNM RULE NO. 4

Due to the size and long-term nature of the financial investment Customer intends to make to develop, construct, own and operate a data center in PNM's service territory in New Mexico, and due to Customer's need for regulatory certainty regarding the terms and conditions of this Contract, this Contract does not contain a provision that it and associated rate schedules shall at all times be subject to change pursuant to Commission order, as provided in 17.1.210.12(B) NMAC, or a provision that PNM reserves the right to modify the rates provided for in this Contract by filing new tariffs with the Commission, as provided in PNM Rule No. 4, ¶ C. The circumstances under which PNM may propose modifications to the rate schedules associated with this Contract by filing new tariffs with the Commission or under which the Commission may modify those rate schedules are described in **Sections 5** and **19** of this Contract.

## 19. AMENDMENT

This Contract may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto and approved by the NMPRC, to the extent required by statute or by NMPRC rule or order.

## 20. SURVIVAL OF OBLIGATIONS

The provisions of this Contract that by their nature are intended to survive the termination, cancellation, completion, or expiration of this Contract shall continue as a valid and enforceable obligation of the Party notwithstanding any such termination, cancellation, completion, or expiration. Such provisions include, without limitation:

(a) The obligation of Customer to make, and the right of PNM to receive, the Early Termination Payment under **Section 9.6**;

(b) The indemnity obligations to the extent provided in **Section 13**;

(c) The obligations of confidentiality set forth in **Section 15**;

(d) The right to pursue remedies under **Section 9**;

(e) The limitation of damages under **Section 10**;

(f) Any payment obligation of either Party arising prior to the date of termination.

## 21. AGREEMENT AUTHORS

The Parties have agreed to this Contract and no ambiguity may be construed against either Party based on the identity of the author or authors of this Contract.

## 22. BINDING EFFECT

This Contract and all provisions hereof shall inure to the benefit of and be binding upon the Parties, their successors, and permitted assigns.

## 23. GOVERNING LAW AND VENUE

The entire relationship of the Parties, this Contract, any remedies of the Parties, and any litigation or legal proceedings (whether grounded in tort, contract, statutory, equitable, or other law) between, involving, or arising among, the Parties, shall be governed by, interpreted in accordance with, and construed consistent with, the laws of the State of New Mexico, without regard to the choice of law principles that may otherwise dictate the application of the laws of another state. Any lawsuit or other legal proceeding (whether at law or in equity) between, involving, or arising among the Parties, or relating to this Contract, will be commenced and pursued solely in the state or federal courts located in Bernalillo County, New Mexico. The Parties hereby waive any challenge they may have to the jurisdiction of such courts, consent to jurisdiction and venue in such courts, and relinquish any right to seek a change of venue or forum for any reason, including the alleged inconvenience of the venue or forum.

## 24. WAIVER

No delay, failure or refusal on the part of a Party to exercise or enforce any right under this Contract shall impair such right or be construed as a waiver of such right or any obligation of the other Party, nor shall any single or partial exercise of any right hereunder preclude other or further exercise of any right. The failure of a Party to give Notice to the other Party of a breach of this Contract shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

## 25. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be deemed to be an original, but all such counterparts will together constitute but one and the same instrument. PNM and Customer may retain a duplicate copy of this Contract, which will be considered an equivalent to this original.

## 26. RECORDS; AUDIT

PNM shall create and keep accurate accounts of calculations, third party costs, expenses and liabilities substantiating amounts due from Customer to PNM under this Contract, including without limitation the Special Service Rate, the Green Energy Rider, and the SSC Resource Procurements ("**Records**"). PNM shall maintain the Records in a format sufficient to allow verification that they are complete, accurate, and up-to-date. PNM shall keep and maintain the Records in accordance with the requirements of 17.3.310.10 NMAC, and Customer may inspect and audit those records during normal business hours upon reasonable advance notice and with as little impact to PNM's business as reasonably possible. All external costs of such audits and inspections will be borne by Customer.

## 27. ENTIRE AGREEMENT

This Contract and any exhibits and attachments hereto, as each may be amended from time to time, represent the entire agreement and understanding between PNM and Customer with respect to the subject matter hereof, and supersedes any prior understandings, representations or agreements, whether verbal or written, between the Parties as to the subject matter hereof.

[*Signature Page(s) Follow*]

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**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed by their respective duly authorized representatives as of the Execution Date.

PUBLIC SERVICE COMPANY OF NEW MEXICO,
a New Mexico corporation

By: _____
Henry E. Monroy (Jun 12, 2025 13:36 MDT)
Printed Name: Henry E. Monroy
Its: Senior Vice President and Chief Financial Officer

GREATER KUDU LLC.
a Delaware limited liability company

By: R. Bryce Dalley
R. Bryce Dalley (Jun 12, 2025 10:06 PDT)
Printed Name: R. Bryce Dalley
Its: Authorized Representative

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**EXHIBIT A**

**[RESERVED]**

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**EXHIBIT B**

**FORM OF THIRD PARTY PPA**

**FORM OF THIRD PARTY ESA**

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**FORM OF THIRD PARTY PPA**

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL) AND ALL REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED, DELIVERED AND APPROVED BY ALL REQUIRED REGULATORY BODIES, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.

# POWER PURCHASE AGREEMENT

## [●] SOLAR FACILITY

**by and between**

## PUBLIC SERVICE COMPANY OF NEW MEXICO

**and**

**[●]**

**Dated as of [●]**

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**EXHIBITS**

Exhibit A Description of Seller's Generation Facilities, Site Map and Project Schedule

Exhibit B One-Line Diagrams of Project and Interconnection Facilities

Exhibit C Description of Site

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Exhibit E Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained

Exhibit F Commissioning Tests

Exhibit G-1 Insurance Coverages

Exhibit G-2 Form of Attestation and Bill of Sale

Exhibit H Availability Guarantee

Exhibit I Form of Seller Guaranty

Exhibit J Commercial Operation Form of Certification

Exhibit K Annual Degradation Guarantees

Exhibit L Annual Generation Forecast

Exhibit M PPA Functional Mapping

Exhibit N Interconnection Metering Standard

Exhibit O Commissioning and Testing Process

Exhibit P Form of Lender Consent

Exhibit Q Form of Estoppel Certificate

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POWER PURCHASE AGREEMENT—[●] **SOLAR FACILITY**

This Power Purchase Agreement—[●], as may be amended from time to time, is entered into this [●] Day of [●], [●] ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and [●] ("**Seller**"), whose principal place of business is [●]. Buyer and Seller may be referred to in this PPA individually as a "**Party**" and collectively as the "Parties."

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission; and

WHEREAS, Seller desires to develop, design, construct, own and operate a solar energy electric generating facility with an expected total maximum power output of approximately [●] ([●]) MW ("**Project**"), as further defined herein and in Exhibit A; and

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (as amended from time to time, "**Special Service Contract**"), between Buyer and Greater Kudu LLC ("**Retail Customer**"), as amended from time to time, Buyer has agreed, by entering into this PPA, to procure the Energy from the Project to serve Retail Customer's load; and

WHEREAS, Seller desires to generate, sell and deliver to Buyer the Energy generated by the Project and any and all associated or correlative Renewable Energy Certificates and other Environmental Attributes, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this PPA; and

WHEREAS, Buyer and Seller intend to enter into a certain Energy Storage Agreement, pursuant to which some of the Energy shall be exclusively used in Seller's Energy Storage System, and for which Buyer shall purchase the Energy Storage Product,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
Definitions and Rules of Interpretation

1.1 Definitions. The following terms have the meanings set forth herein.

"**Abandonment**" means (a) prior to the Commercial Operation Date, a cessation of work and operations at or in respect of the Project for more than ninety (90) consecutive Days by Seller or Seller's contractors but only if such cessation is not in accordance with Prudent Utility Practices, caused by a Force Majeure Event, caused by a Buyer Event of Default or is not in accordance with Seller's Project Schedule; or (b) after the Commercial Operation Date, the permanent relinquishment of possession and control of the Project (or any material portion

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thereof) by Seller, other than a transfer permitted under this PPA.

"**AC**" means alternating electric current.

"**Accounting Standards**" has the meaning set forth in Section 22.18.

"**Additional Consents**" means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this PPA that are required from any Governmental Authority with respect to the Project.

"**Affiliate**" of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity, excluding any Tax Equity Investor. For purposes of this definition, the term "control" (including the terms "controls," "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise.

"**After Tax Basis**" means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment ("**Base Payment**") supplemented by a further payment ("**Additional Payment**") to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

"**AGC**" stands for "**Automatic Generation Control**" and means energy management system equipment that automatically adjusts the generation quantity of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

"**Ancillary Services**" means operating reserves, frequency regulation, reactive supply, voltage control, frequency response, contingency reserves, and other products associated with electric generation and Energy, each to the extent that the Project is capable of providing such services.

**"Annual Generation Forecast"** means the forecasts of generation from the Project set forth on Exhibit L.

"**Annual Performance Test**" has the meaning set forth in Section 10.8(B).

"**Annual Performance Test Guarantee**" has the meaning set forth in Section 10.9(A).

"**Annual Performance Test Guarantee Damages**" has the meaning set forth in Section 10.9(C).

"**Annual Performance Test Guarantee Ratio**" has the meaning set forth in Section 10.9(A).

"**Annual Performance Test PVSYST Model**" has the meaning set forth in Section 10.8(D)(8).

"**Anything of Value**" includes, but is not limited to, cash or a cash equivalent (including "grease," "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

"**Applicable Law**" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, applicable to this PPA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"**Attestation and Bill of Sale**" has the meaning set forth in Section 9.1(C).

"**Back-Up Metering**" has the meaning set forth in Section 5.3(A).

"**Balancing Area**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Balancing Area Authority**" or "**BAA**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

"**Business Day**" means any calendar Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

"**Buyer**" has the meaning set forth in the Preamble, and acts herein in its merchant function capacity.

"**Buyer Costs**" means brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or entering into new arrangements which replace this PPA; and all reasonable attorneys' fees and expenses incurred by Buyer in connection with the termination of this PPA, to the extent such costs are not

already included in Replacement Energy Costs.

"**Buyer-Requested Performance Tests**" has the meaning set forth in Section 10.10.

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement Energy Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value; provided that if (b)(i) is less than (b)(ii), then zero, plus (c) any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs, Environmental Attributes and any Future Environmental Attributes that are currently available pursuant to this PPA as of the date of termination of this PPA, Seller acknowledging that Buyer entered into this PPA for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes and any Future Environmental Attributes; plus (d) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. The Buyer Termination Payment does not include consequential, punitive, exemplary or indirect or business interruption damages.

"**CAISO**" means the California Independent System Operator Corporation and any successor entity.

"**CAISO Tariff**" means the CAISO Open Access Transmission Tariff that has been filed with an accepted by FERC, as may be amended from time to time.

"**Capacity Shortfall Damages**" has the meaning set forth in Section 3.8.

"**Change of Control**" means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller.

"**Commercial Operation**" means when the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) all Seller required permits, required consents and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect, (c) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for the interconnection and delivery of Energy to the Point of Delivery in an amount at least equivalent to ninety percent (90%) of the Guaranteed Solar Capacity and is not in material breach of its Interconnection Agreement, (d) Seller has satisfactorily completed all of the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures (e) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement, (f) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this PPA, and (g) Seller has provided to Buyer an officer's certificate that the

Project has been completed in all material respects.

"**Commercial Operation Date**" means the date on which all of the following have occurred: (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10, (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation Notice**" has the meaning set forth in Section 3.10.

"**Commercial Operation Year**" means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

"**Commissioning Performance Test**" has the meaning set forth in Section 10.8(A) with such test detailed in Exhibit F and required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

"**Commissioning Readiness Review Meeting**" has the meaning set forth in Exhibit O.

"**Commissioning Tests**" has the meaning set forth in Section 10.2 as further defined in Exhibit F.

"**Commissioning Kickoff Meeting**" has the meaning set forth in Section 3.1 of Exhibit O.

"**Compensable Curtailment**" means any curtailment of the Project, this is not a Reliability Curtailment to the extent such curtailment during a Commercial Operation Year has exceeded five percent (5%) of the Annual Generation Forecast for the same Commercial Operation Year.

"**Confidential Information**" has the meaning set forth in Section 22.14(C).

"**Contract Value**" means the sum of the present values of the payments for Solar Energy Output, for each Commercial Operation Year (or portion thereof) in the then-remaining term, (determined without reference to the early termination), which annual amount is equal to (a) the quantity of Metered Output and RECs expected to be produced during such Commercial Operation Year (or portion thereof) times (b) the Solar Energy Output Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Creditworthy**" means that, with respect to any two of the three Rating Agencies

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provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Customer Event of Default**" has the meaning set forth in the Special Service Contract.

"**Data Breach**" has the meaning set forth in Section 22.14(F).

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

"**Deemed Energy**" has the meaning set forth in Section 4.1(A).

"**Default Rate**" has the meaning set forth in Section 9.4.

"**Defaulting Party**" means the Party with respect to which an Event of Default under Article 12 has occurred.

"**Delay Damages**" has the meaning set forth in Section 3.7.

"**Delayed Capacity**" has the meaning set forth in Section 3.7.

"**Delivery Term**" has the meaning set forth in Section 7.1.

"**Delivery Term Security**" has the meaning set forth in Section 19.1.

"**Development Security**" has the meaning set forth in Section 19.1.

"**Disclosing Party**" has the meaning set forth in Section 22.14(A).

"**Dispute Notice**" has the meaning set forth in Section 13.8.

"**Disputing Party**" has the meaning set forth in Section 9.5(A).

"**Dollars**" means the lawful currency of the United States of America.

"**Downgrade Event**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is not as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Early Termination Date**" has the meaning set forth in Section 12.4.

"**EDAM**" means the Extended Day-Ahead Market, an extension of CAISO's existing day-ahead energy market, that will be offered to participants outside of the CAISO balancing authority area to participate in day-ahead trading, and which is expected to launch in Q2 2026.

"**EIM**" means the Western Energy Imbalance Market, an energy-only real-time market operated by CAISO and offered to western participants outside of the CAISO balancing authority area, where such participants can voluntarily determine how their transmission and generation resources engage in the market.

"**Electric Interconnection Point**" means the Point of Delivery.

"**Electric Metering Device(s)**" means all metering and data processing equipment used to measure, record, or transmit data relating to the Solar Energy Output generated by the Project. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering including the metering current transformers and the metering voltage transformers.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, generated by the Project and delivered to Buyer at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices, net of auxiliary loads, station electrical uses and appropriate line losses.

"**Energy Shortfall**" has the meaning set forth in Section 10.9(B).

"**Energy Storage Agreement**" means that certain Energy Storage Agreement between [●] and Buyer dated as of [●].

"**Energy Storage Product**" has the meaning ascribed to the term "Product" in the Energy Storage Agreement.

"**Energy Storage System**" or "**ESS**" has the meaning ascribed to it in the Energy Storage Agreement. The Energy Storage System is being developed concurrently and jointly with the Project and may share certain equipment, buildings, and facilities, including transformers, Interconnection Facilities, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate, with the Project.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the

generation, purchase, sale or use of Energy. Environmental Attributes include (A) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States Environmental Protection Agency or other governmental agencies, (B) any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act, (C) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, (D) credits, benefits or allowances resulting from the compliance of the Project or Project Energy with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes include all RECs, any and all aspects of a REC, and the exclusive right to claim the additionality, or "but for cause", of such Projects' development and commercial operation, (E) all WREGIS Certificates as defined by the WREGIS Operating Rules and (F) those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project's generation of electricity. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; (iii) any Energy, reliability or other power attributes from the Project, (iv) matters designated by Buyer as sources of liability, and (v) any adverse wildlife or environmental impacts.

"**Environmental Contamination**" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this PPA.

"**Event of Default**" means a Seller Event of Default as set forth in Section 12.1 or a Buyer Event of Default as set forth in Section 12.2.

"**Execution Date**" has the meaning set forth in the Preamble.

"**Expected Commercial Operation Date**" has the meaning set forth in Section 3.1.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**Fitch**" shall mean Fitch Ratings Inc. or any successor thereto, or in the event that there is

no such successor, a nationally recognized credit rating agency.

"**Force Majeure Event**" has the meaning set forth in Section 14.1.

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on the Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date.

"**GAAP**" has the meaning set forth in Section 22.18.

"**Government Official**" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

"**Governmental Approval**" means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of renewable energy and Renewable Energy Certificates and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation with regard to any Non-Governmental Compliance Obligations.

"**Governmental Authority**" means any applicable federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"**Governmental Charges**" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of Solar Energy Output contemplated by this PPA, either directly or indirectly.

"**Gross Receipts Taxes**" means any New Mexico state and local sales taxes, gross receipts taxes and similar taxes and charges.

"**Guaranteed Solar Capacity**" has the meaning set forth in Section 3.1.

"**Guaranteed Start Date**" has the meaning set forth in Section 3.1.

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"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" has the meaning set forth in Section 1.4.

"**Installed Solar Capacity**" means, as of a given point in time, the aggregate nameplate capacity of all Solar Units installed and commissioned at the Project.

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended from time to time.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities as defined and set forth in the Interconnection Agreement.

**"Interconnection Delay"** means the Transmission Provider's delay of the In-Service Date (as defined in the Interconnection Agreement) beyond the schedule set forth in the Interconnection Agreement in completing construction of the Interconnection Facilities or upgrades to the Transmission Provider's Transmission System related to, and required pursuant to the Interconnection Agreement for, the interconnection of the Project, but only to the extent that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, including Seller's failure to complete its obligations under the Interconnection Agreement as needed to ensure timely completion and operation of such Interconnection Facilities.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities as defined and set forth in the Interconnection Agreement (or an analogous term, to the extent the Interconnection Agreement is amended or replaced).

"**Issuer Minimum Requirements**" has the meaning set forth in Section 19.2.

"**ITC(s)**" means the investment tax credits established pursuant to Section 48 or Section 48E of the Internal Revenue Code, as such law may be amended or superseded.

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"**kW**" means one or more kilowatts AC of electricity, as the context requires.

"**kWh**" means kilowatt hour AC.

"**Lender(s)**" means any and all Persons other than an Affiliate of Seller: (a) lending money or extending credit (including any financing lease, monetization of tax benefits, construction, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or to an Affiliate of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing (including tax equity bridge financing), credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) for any capital improvement or replacement related to the Project; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

"**Letter of Credit**" means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

"**Licensed Professional Engineer**" means an independent, professional engineer that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, (4) Clean Energy Associates, or (5) Leidos Engineering, LLC; and (B) reasonably acceptable to Buyer (provided that at least one of the foregoing (A)(1)-(5) shall be reasonably acceptable to Buyer), licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

"**Local Provider**" has the meaning set forth in Section 1.4.

"**Losses**" has the meaning set forth in Section 20.1(A).

"**Market Event**" has the meaning set forth in Section 22.22.

"**Market Operator**" means (a) CAISO in its capacity as operator of EIM, (b) the operator of the BAA or any other entity performing the market operator function for the BAA, or (c) any organized day-ahead or intra-hour market for a region that includes the Transmission Provider's Transmission System.

"**Metered Output**" means the Energy made available from the Project at the Point of Delivery, as measured by the Electric Metering Devices and adjusted for any losses, based on methodology formulated in accordance with Prudent Utility Practices and approved by Buyer in its commercially reasonable discretion, between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Model Rated Power**" has the meaning set forth in Section 10.8(D)(6).

"**Month**" means a calendar month.

"**Monthly Billing Period**" means the period during any particular Month in which Solar

Energy Output has been generated by Seller for Buyer and delivered to the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.12.

"**Moody's**" means Moody's Investor Services, Inc. and any successor thereto.

"**Mountain Standard Time**" or "**MST**" means the time that is seven (7) hours behind Coordinated Universal Time (UTC).

**"MPT Failure"** means any failure in the Project's main power transformer or high voltage breakers (a) requiring (x) at least a thirty (30) day outage, and (y) any of (i) replacement of the main power transformer or high voltage breakers, (ii) shipment of the main power transformer or major component thereof, or high voltage breakers or major component thereof, to the manufacturer for repair, or (iii) the on-site repair of the main power transformer or major component thereof, or high voltage breakers or major component thereof, and (b) that is not caused directly or indirectly by Seller's failure to comply with Prudent Utility Practices (including failure to maintain adequate spare parts for replaceable equipment connected to the main power transformer or high voltage breakers) or Applicable Law or otherwise by the dalliance, delay, fault or negligence of or by Seller.

"**Munitions List**" means any list of articles, services or technology designated as defense or military articles, technologies, software or services by any relevant Government Authority, including items listed on the United States Munitions List and/or the Common Military List of the European Union.

"**MW**" means megawatt or one thousand (1,000) kW AC.

"**MWh**" means megawatt hours AC.

"**NERC**" means the North American Electric Reliability Corporation or any successor organization.

"**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in Section 17.3(B).

"**Non-Defaulting Party**" means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

"**Non-Governmental Compliance Obligations**" means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, and self-regulatory organizations to which the Party is required to have membership and/or submit to jurisdiction in the performance of this PPA.

"**O&M Records**" has the meaning set forth in Section 13.4(A).

"**OATT**" means Open Access Transmission Tariff.

"**Operating Parameters**" has the meaning set forth in Section 10.4(A).

"**Operating Procedures**" means those procedures developed pursuant to Section 10.5.

"**Operating Records**" means all operating logs, blueprints for construction, operating manuals, all warranties on equipment, material engineering drawings, environmental permits, plans, and all documents, including but not limited to supply contracts, studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

"**Outage Notice**" has the meaning set forth in Section 7.5(A).

"**Party**" or "**Parties**" has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

"**Performance Test Ratio**" has the meaning set forth in Section 10.8(D)(4).

"**Performance Test Report**" has the meaning set forth in Section 10.8(G).

"**Performance Tests**" has the meaning set forth in Section 10.8.

"**Person**" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**PNM Event of Default**" has the meaning set forth in the Special Service Contract.

"**Point of Contact List**" or "**POC List**" has the meaning set forth in Section 2 of Exhibit O.

"**Point of Delivery**" means the electric system point at which Seller makes available to Buyer and delivers to Buyer or accounts for the Solar Energy Output being provided by Seller to Buyer under this PPA. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this PPA.

"**PPA**" or "**Power Purchase Agreement**" or "**Agreement**" means this Power Purchase Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"**Primary Metering Device(s)**" means the metering and data processing equipment used as the primary basis to measure, record, or transmit data relating to the Metered Output associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

"**Project**" means Seller's solar energy generation facility with a nameplate capacity of [●] ([●]) MW at the Point of Delivery located in [●] County, New Mexico which will produce the

Solar Energy Output made available to Buyer under this PPA, including one or more of Seller's Solar Units and Seller's Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this PPA, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this PPA.

"**Project Manager**" has the meaning set forth in Section 10.1(D).

"**Project Schedule**" has the meaning set forth in Section 3.2(A).

"**Projected Schedule**" has the meaning set forth in Section 7.4(A).

"**Promotional Materials**" has the meaning set forth in Section 22.15.

"**Prudent Utility Practice(s)**" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available when needed and are adequately experienced and trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system, or contrary to environmental laws, permits or

regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for solar power generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Sites and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

"**PTC(s)**" means the production tax credits established pursuant to Section 45 or Section 45Y of the Internal Revenue Code, as such law may be amended or superseded.

"**PTs**" has the meaning set forth in Section 5.3(A).

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating at least one thousand (1000) MW, in the aggregate, of solar generation and that is trained on the functionality and operation of the solar generation technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) a current long-term credit rating (corporate or long-term senior unsecured debt) of (A) "A2" or higher by Moody's and "A" or higher by S&P, if such Person is rated by both Moody's and S&P, or (B) "A2" or higher by Moody's, or "A" or higher by S&P if such Person is rated by either S&P or Moody's, or (C) equivalent ratings by any other credit rating agency of recognized national standing, and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility), or (b) is reasonably acceptable to Buyer.

"**RC**" has the meaning set forth in Section 10.8(D)(1).

"**Receiving Party**" has the meaning set forth in Section 22.14(A).

"**Receiving Party's Representatives**" has the meaning set forth in Section 22.14(B).

"**Recording**" has the meaning set forth in Section 22.19.

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator area in the Western Interconnection.

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"**Reliability Curtailment**" means any curtailment of the Project (a) that is ordered by (i) the Market Operator, (ii) the BAA or (iii) the Transmission Provider as operator of the Transmission Provider's Transmission System or pursuant to the Interconnection Agreement, (b) by Seller for an Emergency Condition or safety or equipment failure situations, or (c) except that it shall also be a Reliability Curtailment for an oversupply position only where resources are contributing to an excess position of 50 MW or more in relation to PNM's jurisdictional utility load and the Market Operator cannot either manage such oversupply through market operations or export such oversupply due to NERC generation control performance standards (including BAL-001-2), which curtailment shall be done in an equitable and non-discriminatory manner and consider available energy storage resources associated with Retail Customer. Buyer will, upon reasonable notice, provide Seller reasonable documentation relating to any curtailment Buyer considers Reliability Curtailment.

"**Renewable Energy Certificate**" or "**REC**" means a WREGIS Certificate as defined by the WREGIS Operating Rules and all Environmental Attributes associated with the generated energy. Seller must deliver RECs that are compliant with the requirements of the New Mexico Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended.

"**Replacement Energy Costs**" means the costs to Buyer reasonable and necessary to replace Solar Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein and based upon similar terms, conditions and performance standards outlined in this PPA) which Seller, in accordance with this Agreement, was obligated to deliver to Buyer but failed to provide pursuant to this Agreement. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs) and Ancillary Services delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Solar Energy Output to the Point of Delivery and any associated transmission or distribution costs, (b) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (c) Buyer's expenses, including reasonable attorneys' fees, suffered as a result of Seller's failure to perform under this PPA.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**Retail Customer"** has the meaning set forth in the Recitals.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community or, His Majesty's Treasury or any, and each other sanctions authority which has jurisdiction in respect of any Party or the Project.

"**Scheduled Maintenance Outage**" means a time during which a Solar Unit is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" or **"SCC"** has the meaning set forth in Section 3.9.

**"Scope Reporting Rule"** means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 Code of Federal Regulations § 229.1500, et seq., as amended from time to time, and, to the extent Buyer or Retail Customer voluntarily elects in its sole discretion to comply therewith, as proposed, or, following the effectiveness thereof, in the final rule form thereof despite being stayed or vacated by appealable judicial action and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Subscriber voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

"**SEC**" has the meaning set forth in Section 22.18.

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Security**" means Development Security or Delivery Term Security, as applicable.

"**Seller**" has the meaning set forth in the Preamble.

"**Seller Excused Hours**" means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Scheduled Maintenance Outage, (b) a Reliability Curtailment, (c) a Compensable Curtailment, (d) a Force Majeure Event, or (e) any failure by Buyer to receive Energy at the Point of Delivery.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Project to the Point of Delivery in an amount of at least five (5) MWs not associated with Seller Excused Hours.

"**Seller Guarantor**" means an entity that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Parties**" means: (a) Seller's Affiliates; (b) owners, directors, officers and employees of Seller or Seller Affiliates; and (c) representatives, agents, and subcontractors of Seller and/or Seller Affiliates, in each case, providing services on behalf of, or engaged by, Seller or Seller Affiliates in connection with this Agreement and any activity contemplated hereunder or

thereunder (and a "Seller Party" is any one of the foregoing).

"**Seller Permitted Transfer**" means any of the following: (a) a Change of Control of Seller's Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor in connection with a Tax Equity Financing; or (c) a transfer of all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction; *provided*, that in the case of each of (b) or (c), following such transfer (A) the entity that operates the Project is (or contracts with) a Qualified Operator, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics, and Seller, or such Person, maintains the applicable Seller Security requirements in accordance with Article 19.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the Solar Energy Output for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; provided that if (a)(i) is less than (a)(ii), then zero, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or in entering into new arrangements which replace this PPA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this PPA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this PPA.

"**Shortfall Factor**" has the meaning set forth in Section 10.9(B).

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to

this PPA. This PPA is Site specific, and any relocation of the physical location of the proposed Point of Delivery with respect to the Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. Adding or subtracting contiguous parcels of property or modifying the layout of arrays within the Site will not be deemed a relocation requiring Buyer consent.

"**Solar Energy Output**" means Metered Output, Environmental Attributes (including, but not limited to RECs) and Ancillary Services generated by the Project.

"**Solar Energy Output Payment Rate**" means the price to be paid by Buyer to Seller for the Solar Energy Output, as set forth in Section 3.1.

"**Solar Period Hours**" has the meaning set forth in Exhibit H.

"**Solar Unit(s)**" means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with a single inverter.

"**Special Service Contract**" has the meaning set forth in the Recitals.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of generating units, including the Solar Units.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits and any other tax credits which are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, (i) with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project, or (ii) any transaction or series of transactions pursuant to which Seller or an upstream equity owner of Seller sells the tax credits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

"**Term**" means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Energy**" means any and all Solar Energy Output generated by the Project and delivered to Buyer during the Test Period.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date.

"**Test Rated Power**" has the meaning set forth in Section 10.8(D)(5).

"**Transmission Provider**" means Public Service Company of New Mexico, Inc., a New Mexico corporation, acting in its transmission function capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under its OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means [●].

"**Weather Stations**" has the meaning set forth in Section 10.11(A).

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

"**WREGIS Qualified Reporting Entity**" as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS Certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules and WREGIS Terms of Use.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this PPA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this PPA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this PPA, the terms of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this Agreement as a whole.

(H) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(I) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or".

(J) Headings and Section titles are solely for convenience and should not be used to aid in the construction of this Agreement.

(K) All uses of the word "shall" in this PPA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions and therefore:

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this PPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power to the Project, for any purpose ("**House Energy**"). Seller shall secure a contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter Energy generated and delivered by the Project in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this PPA are not binding upon the Local Provider. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this PPA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and for House Energy, backfeed power, and station service power or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy, backfeed power, and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This PPA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the [●] ([●]) Commercial Operation Year ("**Term**"), subject to the early termination provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms, as more fully set forth in this PPA, apply to the transaction contemplated by this PPA:

**COMMERCIAL TERMS**

| | |
|---|---|
| **Buyer:** Public Service Company of New Mexico | **Seller:** [●] |
| **Project:** [●] | |
| **Point of Delivery:** The point within WECC Path 48 where Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided under this PPA, as further specified in the definition of "Point of Delivery". | |
| **Contract Term:** [●] | **Guaranteed Solar Capacity (MWs):** [●] $MW_{AC}$ |
| **Product Type:** Bundled Energy, Ancillary Services, RECs, and Environmental Attributes | **Solar Energy Output Payment Rate:** $[●]/MWh |
| **Day(s) of week:** Monday through Sunday, including NERC holidays | **Hours:** Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time ("**MST**") |
| **Guaranteed Start Date:** One Hundred Eighty (180) Days after the Expected Commercial Operation Date | |
| **Expected Commercial Operation Date:** [●] | |

3.2 Project.

(A) Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

(B) Exhibit L identifies the expected first year total annual Energy to be delivered from the Project to the Point of Delivery and the corresponding capacity factor. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Solar Units and Energy Storage System at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units, Interconnection Facilities, and Energy Storage System at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practice(s), the terms of this PPA and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Sections 3.4.A through Section 3.4.H, and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N – Interconnection Metering Standard from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) be capable of both full load and idle operation over an ambient temperature range of -10°F to 110°F with the full range of relative humidity;

(F) deliver Energy to Buyer, at the frequency specified by Buyer , within a commercially reasonable range;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of disconnection remotely by the System Control Center; and

(I) the Project shall meet or exceed the recommended performance specifications of this Section 3.4(I) through Section 3.4(L), and as appropriately defined in IEEE Standard 2800-2022 Sections 5, Section 6 and Section 7 at the Point of Delivery during nominal grid conditions;

(J) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Sections 5 at the Point of Delivery;

(K) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Sections 7 at the Point of Delivery, which shall be Category II minimum;

(L) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery; and

(M) No later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the Project. These controls shall include the following MESA-ESS modes or equivalent: (i) Active Power Smoothing, (ii) Automatic Generation Control, and (iii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Sections 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this PPA, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended (a) up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to

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the duration of any Force Majeure that delays construction or commencement of operation of the Project, on a day-for-day basis; (b) up to a maximum of one hundred eighty (180) days or longer period agreed to by the Parties in the event of delay associated with the timely completion and operation of the Interconnection Facilities, necessary for the interconnection of the Project; provided that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, on a day-for-day basis;, and (c) on a day-for-day basis up to a maximum of one hundred eighty (180) Days for each Day that NMPRC Approval has not been received after the occurrence of the initial Regulatory End Date. Seller shall give written notice to Buyer describing any such delay in accordance with Section 14.2 after becoming aware of any extension of Expected Commercial Operation Date. The number of Days of such extension shall be calculated from the date on which the event begins. If cumulative extensions under (a) or (b) above will delay the Commercial Operation Date beyond the Guaranteed Start Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this PPA without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity as of the determination date.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity of the Project has been constructed, commissioned, and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Solar Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars ($350,000) per MW of Delayed Capacity ("**Capacity Shortfall Damages**"), in which case the Guaranteed Solar Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Energy.

(A) Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generation Operator and will designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M, forty-five (45) Days prior to the beginning of the Test Period. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Test Energy as reasonably required for purposes of testing and commissioning the

Project. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to the initial delivery of Test Energy to Buyer.

(B) Seller shall retain Public Service Company of New Mexico as its WREGIS Qualified Reporting Entity to report to WREGIS under the WREGIS Operating Rules, unless agreed to otherwise by Buyer and Retail Customer. Seller shall document and provide information required for the Qualified Reporting Entity to record RECs with WREGIS for the Test Energy generated prior to the Commercial Operation Date, including but not limited to production data and REC vintage. To the extent that Seller does not provide the necessary information or WREGIS does not provide WREGIS Certificates for the Test Energy, Seller shall (a) provide the RECs for a quantity of Energy equivalent to the quantity of such Test Energy or (b) reimburse Buyer for Buyer's costs to replace RECs for a quantity of Energy equivalent to the quantity of such Test Energy.

3.10 Notice of Commercial Operation. Not less than thirty (30) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied (the "**Commercial Operation Notice**"). Buyer shall in writing either accept or reject Seller's Commercial Operation Notice within fifteen (15) Business Days after the date of such Commercial Operation Notice, in its reasonable discretion, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this PPA is not prohibited by Applicable Law. Any breach of this Section 3.11 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

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ARTICLE 4
AGC; Curtailment

4.1 AGC; Curtailment. Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term capable of controlling each inverter. Beginning on the Commercial Operation Date and in response to directives from the System Control Center, Seller shall curtail the Project by use of the AGC system to effect Buyer's curtailment rights pursuant to this Section 4.1 for a Compensable Curtailment or a Reliability Curtailment. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction.

(A) The Project shall be curtailable by use of the AGC system to effect a Reliability Curtailment or Compensable Curtailment. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations. "**Deemed Energy**" means the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Compensable Curtailment as follows: Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account weather and pyranometer data from the meteorological station(s), via a mutually agreed upon method, at the Site for all or a portion of the Solar Units taken out of service due to the Compensable Curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller's calculations of Deemed Energy.

(B) Seller shall reduce Solar Energy Output from the Project during and to the extent of any Reliability Curtailment or Compensable Curtailment.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Seller shall be responsible for the costs of interconnection and costs required to deliver the Energy from the Project to Buyer at the Point of Delivery at the required voltage, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-

related charges applicable to the Project's output up to the Point of Delivery. Buyer acknowledges and agrees that the Interconnection Agreement establish a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the ESS, provided that delivery of Energy from the Project to the Transmission Provider's Transmission System shall take priority over Energy discharged from the ESS; and further provided, that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Energy discharged from the ESS shall take priority over delivery of Energy from the Project.

(B) [RESERVED]

(C) On a Day-ahead basis, and no later than 4:00 a.m. MST, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer at the Point of Delivery. Each Friday, and no later than 12:00 noon MST, Seller shall provide Buyer a weekly Project generation forecast for the following week based on equipment availability. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Seller shall provide to Buyer a one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to provide this information to Buyer in a timely manner.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers ("**CTs**") and potential transformers ("**PTs**") ("**Back-Up Metering**"), are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. If Electric Metering Devices are not installed at the Point of Delivery, meters or

meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery. The design of the Electric Metering Device system shall be subject to Buyer approval, not to be unreasonably withheld, prior to commencement of construction of the Project. Electric Metering Devices shall be capable of measuring and reading instantaneous, five minute, fifteen minute and hourly real and reactive Energy and capacity. Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Secondary Metering, fails to register, or if the measurement made by an Electric Metering Device, or Secondary Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric

Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, followed by Secondary Metering, to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If Secondary Metering is installed on the low side of Seller's step-up transformer, the Secondary Metering data shall be adjusted for losses in the same manner as for the Primary Metering Device. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

## ARTICLE 6
## Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this PPA are subject to satisfaction of the following conditions precedent:

(A) As provided in Section 17.3, receipt of NMPRC Approval; and

(B) Receipt of approval of the Boards of Directors of Buyer and its parent company.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

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ARTICLE 7
Sale and Purchase of Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Solar Energy Output delivered or deemed delivered by Seller at the Point of Delivery in accordance with Article 5; *provided, however,* that, subject to Section 8.1(A), Buyer shall not be required to receive and purchase Energy from the Project when and to the extent that (a) a Party's performance is excused by a Force Majeure Event, (b) a Reliability Curtailment is continuing, (c) a Seller Forced Outage is continuing, (d) a Compensable Curtailment is continuing, or (e) a Scheduled Maintenance Outage is continuing. Furthermore, and without limiting Section 10.7, Buyer shall not be required to receive or purchase Solar Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Solar Capacity, as adjusted for losses to the Point of Delivery.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Energy from the Project up to delivery and receipt at the Point of Delivery and Buyer shall be deemed to be in control of such Energy from the Project from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy from the Project shall transfer from Seller to Buyer at the Point of Delivery. Title related to any Environmental Attributes and Future Environmental Attributes shall transfer from Seller to Buyer upon generating of the Energy from the Project.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such Future Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any Future Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this PPA, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; provided that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements and any other applicable guidelines. Buyer shall control scheduling of Metered Output. At least thirty (30) Days prior to the

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anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Solar Energy Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall (i) provide Buyer with a good faith estimate of the hourly quantities of Solar Energy Output that Seller expects to generate in the following Commercial Operation Year ("**Projected Schedule**"); and (ii) provide estimates of the daily quantity of Energy to be delivered to Buyer. Buyer is not required to provide this Project as a participating resource in a regional market.

(B) [RESERVED].

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Solar Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly quantities of Solar Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Seller Forced Outages.

(A) Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

7.6 Availability Guarantee. Seller guarantees that the Project shall be available to produce Solar Energy Output and shall pay Solar Availability Damages, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

## ARTICLE 8
## Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in

Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly Solar Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Solar Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to (i) the product of (a) the aggregate amount of Solar Energy Output (MWh) delivered to Buyer at the Point of Delivery from the Project plus the Deemed Energy resulting from Compensable Curtailment multiplied by (b) the Solar Energy Output Payment Rate. As used herein, the "**Solar Energy Output Payment Rate**" is the rate of $[●] per MWh for the Solar Energy Output delivered or deemed delivered to Buyer to the Point of Delivery from the Project. The Solar Energy Output Payment Rate also is the sole payment from Buyer to Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Solar Energy Output Payment Rate includes all Taxes. Buyer shall not be required to pay Seller for any Energy curtailed during any Reliability Curtailment.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this PPA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail, including an Attestation and Bill of Sale verifying the associated RECs and Environmental Attributes, if applicable, in the form of Exhibit G-2 ("**Attestation and Bill of Sale**").

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the

charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this PPA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this PPA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the "prime" rate as published in The Wall Street Journal on the first Business Day of each Month plus one-half percent (0.5%) ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with

interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this PPA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Gross Receipts Tax is applicable to the sale or delivery of Solar Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Solar Energy Output and on Buyer's payment and Seller's receipt of amounts due under this PPA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Solar Energy Output to Buyer pursuant to this PPA.

(B) Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's

responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this PPA and implement the provisions in this PPA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this PPA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this PPA, including Section 9.9 below, all payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this PPA, including damages and other payments that are owed by a party to the other Party pursuant to this PPA. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this PPA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this PPA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 10
## Operations and Maintenance

10.1 Construction of the Project.

(A) Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and

after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-23-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by NMSA Section 62-13-16. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer after consultation with Retail Customer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed Solar Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or

delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this Agreement with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least thirty (30) Days' prior notice of the approximate test date and ten (10) Days prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days' advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall

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conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this PPA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this PPA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five-minute and real-time data communications with Buyer related to delivery of the Solar Energy Output up to the Point of Delivery. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet operability performance requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. Seller shall provide Buyer with all real time measurement parameters of the Project including individual inverter and system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Sections 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers requirements and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day's written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than ninety (90) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "**Operating Procedures**"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, and Solar Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this PPA, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this PPA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following Commercial Operation Year. Should Buyer desire to change the reporting dates noted above, the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's generation, including the duration of such event. Each Scheduled Maintenance Outage for the Commercial Operation Year will be subject to reasonable approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Project's generation for any reason at any time during May 1st through September 30th without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such

requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Metered Output to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Seller shall not sell or divert Solar Energy Output to any Person other than Buyer.

10.8 Performance Tests. "**Performance Tests**" means the Commissioning Performance Test, the Annual Performance Tests, and Buyer-Requested Performance Tests as described in this Section 10.8 and in Sections 10.9 and 10.10. Performance Tests shall be performed to verify compliance of the solar photovoltaic plant net AC capacity at the Point of Delivery with the Guaranteed Solar Capacity.

(A) Seller shall conduct a performance test prior to the Commercial Operation Date in accordance with applicable provisions of this Section 10.8 (the "**Commissioning Performance Test**"). The Commissioning Performance Test shall be determined to be satisfied when the Performance Test Ratio determined from the Commissioning Performance Test results in a value greater than or equal to 0.95 without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. In the case that the Performance Test Ratio determined from the Commissioning Performance Test is below 0.95, Capacity Shortfall Damages shall be due from Seller in accordance with Section 3.8 of this PPA. Capacity Shortfall Damages shall be applied to a Delayed Capacity value equivalent to the Guaranteed Solar Capacity multiplied by (0.95 - the as-tested Performance Test Ratio) and then multiplied by the Capacity Shortfall Damage rate identified in Section 3.8.

(B) Seller shall conduct a performance test in accordance with this Section 10.8 in each Commercial Operation Year after the Commercial Operation Date (each, an "**Annual Performance Test**"). Each Annual Performance Test shall be performed no earlier than nine (9) months and no later than fifteen (15) months from the completion of the previous Annual Performance Test or Commissioning Performance Test as mutually agreed by the Parties.

(C) Annual degradation rates included in Exhibit K will be used in the Annual Performance Test PVSYST Model for the purpose of Annual Performance Tests described in this Section 10.8. Annual degradation rates identified in Exhibit K shall be applied as incremental to the actual degradation experienced and measured through the prior Commercial Operation Year's Performance Test.

(D) The Commissioning Performance Test, Annual Performance Tests, and Buyer-Requested Performance Tests shall be conducted in accordance with ASTM E2848-13, except where deviations are provided in this Section 10.8(D).

(1) The reporting conditions ("**RC**") will be developed in

accordance with ASTM E2939-13 and will utilize the procedure outlined in Exhibit F. The RC will be calculated using the mean of the qualifying site measured irradiance, wind speed, and ambient temperature data collected during the Performance Test. The same RC will be used for computing the Model Rated Power and Test Rated Power using their respective regression equations.

(2) The Performance Test period will include at least five (5) days of data and at least fifty (50) filtered data points.

(3) Model Rated Power and Test Rated Power shall account for losses to the Point of Delivery.

(4) The result from an Annual Performance Test or Buyer-Requested Performance Test is the ratio of Test Rated Power to Model Rated Power (the "**Performance Test Ratio**").

(5) "**Test Rated Power**" shall be the value produced by the regression of filtered site measured power and site measured weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(6) "**Model Rated Power**" shall be the value produced by the regression of filtered Annual Performance Test PVSYST Model power and filtered model weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(7) The Model Rated Power will be calculated using the Annual Performance Test PVSYST Model. Site measured POA irradiance will be used as the irradiance input to the Annual Performance Test PVSYST Model.

(8) The PVSYST model utilized by Seller to predict the Annual Generation Forecasts included in Exhibit L will be used as the PVSYST model for initial comparison to the actual site performance during the Commissioning Performance Test. Such PVSYST model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of the Commissioning Performance Test. Should any modifications to this PVSYST model be proposed by Seller after completion of the Commissioning Performance Test, Seller shall provide to Buyer the proposed modifications to the draft PVSYST model for review and approval. Any modifications to the PVSYST model mutually accepted by the Parties will be incorporated and the resulting modified PVSYST model together with a schedule of annual degradation will be the "**Annual Performance Test PVSYST Model**".

(9) The Annual Performance Test PVSYST Model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer within one (1) month of the completion of the Commissioning Performance Test. The Annual Performance Test PVSYST Model will annually account for actual degradation through the prior Performance Test with incremental annual

degradation added as previously agreed to by the Parties. This mutually accepted Annual Performance Test PVSYST Model will be utilized without modification, unless agreed to by both Parties, in all Annual Performance Tests and Buyer-Requested Performance Tests as well as determination of any Annual Performance Test Guarantee Damages as defined in Section 10.9.

(E) Within thirty (30) Days of the completion of a Performance Test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the Annual Performance Test.

(F) For all Performance Tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the Performance Test or re-test, and Buyer shall have the option to inspect the Project during such Performance Test or re-test.

(G) For all Performance Tests and re-tests, Seller shall provide a "**Performance Test Report**" that includes all performance data, model simulations, calculations, and test reports to the Buyer for analysis and review. Seller shall maintain records of performance testing for a minimum of five (5) years following the date the test was performed.

(H) Proposed terms associated with the irradiance conditions, degradation allowances, modeling software inputs, and the results evaluation methodology to be utilized for documenting the tested performance shall be provided by the Seller and subject to mutual agreement of the Parties.

10.9 Annual Performance Test Guarantee Damages.

(A) Seller guarantees that Annual Performance Tests shall meet or exceed the Annual Performance Test Guarantee. The "**Annual Performance Test Guarantee**" is met when the average of the Performance Test Ratio for the Annual Performance Test and the Performance Test Ratio for the previous Annual Performance Test, or the Commissioning Performance Test (i.e. 0.95) as applicable, results in a value greater than or equal to 0.95 (the "**Annual Performance Test Guarantee Ratio**") without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. If an Annual Performance Test shows that the Annual Performance Guarantee was met, then Seller shall not owe Annual Performance Test Guarantee Damages.

(B) If any Annual Performance Test shows that the Annual Performance Guarantee was not met, then Seller shall owe Annual Performance Test Guarantee Damages calculated in accordance with this Section 10.9. The calculated Energy shortfall (the "**Energy Shortfall**") shall be the total Energy delivered by Seller in the most recently completed Commercial Operation Year multiplied by the Shortfall Factor. The "**Shortfall Factor**" is one (1) minus the ratio of the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year and the Annual Performance Test Guarantee Ratio. These calculations shall be performed using the following formulas:

$$ES = E_n \times SF$$

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$$SF = 1 - \frac{\frac{1}{2}(PTR_n + PTR_{n-1})}{APTGR}$$

Where,

ES = Energy Shortfall

$E_n$ = Energy delivered by Seller in the most recently completed Commercial Operation Year

SF = Shortfall Factor

$PTR_n$ = Performance Test Ratio for the most recently completed Commercial Operation Year

$PTR_{n-1}$ = Performance Test Ratio for the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year

APTGR = Annual Performance Test Guarantee Ratio

(C) Seller shall pay Annual Performance Test Guarantee Damages in accordance with this Section 10.9. Liquidated damages associated with failure to meet the Annual Performance Test Guarantee shall be paid in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Energy Shortfall, as determined using the above calculation (the resulting amount is the "**Annual Performance Test Guarantee Damages**").

(D) The following is an example (for illustrative purposes only) of the Energy Shortfall calculation: A Performance Test is conducted and results in an average Performance Test Guarantee Ratio of 0.930 (the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year). The Solar Energy Output Payment Rate is $[●]/MWh and the total annual Energy delivered by the Project in the most recently completed Commercial Operation Year is 130,000 MWh. Annual Performance Test Guarantee Damages shall be paid as a result of the Performance Test Ratio being less than the Annual Performance Test Ratio of 0.960. The amount of Annual Performance Test Guarantee Damages is calculated to be [$[●]/MWh X [130,000 X (1 - 0.93 / 0.960)] = $[●].

(E) [RESERVED].

(F) Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for the failure of Seller to meet the Annual Performance Test Guarantee or the Annual Performance Test Guarantee Ratio (including in the event of any Buyer-Requested Performance Tests), shall be the payment of Annual Performance Test Guarantee Damages as and when required in this Section 10.9; provided, however, that the foregoing shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail meet the Annual Performance Test Guarantee or the Annual Performance Test Guarantee Ratio. Any such failures shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default under this PPA.

10.10 Buyer-Requested Performance Tests. In the event of a material adverse change in expected Solar Energy Output based on monthly billing (not including curtailments or expectations of curtailments allowed pursuant to this PPA), Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the conditions described in this Section 10.10. Buyer-Requested Performance Tests will be conducted as described in Section 10.8, for Buyer-Requested Performance Tests performed within the second and subsequent Commercial Operation Years.

(A) If the results of a Buyer-Requested Performance Test fail to meet the Annual Performance Test Guarantee Ratio, Annual Performance Test Guarantee Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(B) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

10.11 Weather Stations.

(A) Seller shall, at Seller's cost and no later than six (6) months prior to the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations ("**Weather Stations**") at the Project Site to monitor and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by Seller's engineer and agreed to by Buyer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall be of a grade equivalent to or better than those used in large-scale utility solar facility installations and include the capability for measuring, indicating, and recording ambient temperature, wind speed and direction (instantaneous and average), barometric pressure, solar radiation, and relative humidity. Seller shall submit to Buyer for review and approval, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules, current inverters, and other prominent features, as applicable. The Weather Stations shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to be maintained by Seller and to provide an unrestricted, real-time indication of all measured parameters to Buyer and the data shall be available to Buyer via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted real time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations.

(C) Data collected from the Weather Stations shall be utilized for determination of the Solar Performance Ratio, minimum solar irradiance for determination of system availability and lost output due to curtailment or outages.

10.12 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Solar Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

## ARTICLE 11
## RECs and Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer within ten (10) Days of the RECs being created in WREGIS and available for transfer. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within ten (10) Days after written notice from Buyer of such failure, and such failure is due to Seller's fault or negligence. The RECs and Environmental Attributes transferred under this PPA are bundled with the associated Energy.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Buyer may, to the extent permitted by Applicable Law and this PPA, assign its rights, title and interest in and to any RECs and Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) [RESERVED].

(E) Seller shall, at its sole expense and before commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the purpose of creating and tracking all Renewable Energy Certificates corresponding to all Metered Output including all Test Energy, including a meter on the low side of Seller's step-up transformer connected to the ESS, and that all associated WREGIS Certificates are issued and tracked and transferred in a timely manner to Buyer. The Parties acknowledge that Seller's registration of the Project with WREGIS requires

achievement of the Commercial Operation Date. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account. Buyer shall have the exclusive right to transfer RECs and Environmental Attributes to Retail Customer's WREGIS account, or retain the RECs and Environmental Attributes in Buyer's WREGIS account and retire the RECs and Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(F) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(G) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, which shall be Public Service Company of New Mexico, unless agreed to otherwise by Buyer and Retail Customer.

(H) Seller shall not report in any public communication, or under any program, that any of the Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer or Retail Customer. Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Environmental Attributes for Buyer to own, hold and manage in Buyer's or Retail Customer's own name and account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Environmental Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Environmental Attributes, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy, and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. To the extent that any such public communication is allowed under Section 13.1, in any public communication concerning the Project, Project Energy or the Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Project Energy.

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ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller enters into an assignment for the benefit of creditors;

(3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller's voluntarily taking advantage of any such law by answer or otherwise;

(4) The sale by Seller to a third party, or diversion by Seller for any use, of Energy, RECs or Ancillary Services committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this PPA or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this PPA, or other date mutually agreed to by the Parties in writing;

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA on more than three occasions in any rolling thirty-six consecutive month period;

(8) The Project fails, after the third anniversary of the Commercial Operation Date, to maintain an Actual Solar Availability Percentage of at least eighty percent (80%) over two (2) successive Commercial Operation Years; provided, however, for a single occurrence during the Term of this Agreement for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Mechanical Availability calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(8);

(9) The Project fails to obtain an Actual Solar Availability Percentage of at least fifty-five percent (55%) over any Commercial Operation Year; provided, however, for a single occurrence during the Term of this PPA for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, and only to the extent Seller takes prompt and commercially

reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Mechanical Availability calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(9);

(10) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The failure of Seller to make any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure

(3) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) Seller's failure to make any payment due to Buyer under or in connection with this PPA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this PPA), unless remedied within thirty (30) Days of receipt by Seller of written notice of such failure from Buyer;

(6) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice; or

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA, unless remedied within five (5) Business Days of receipt of notice of such failure.

(8) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation

Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to deliver Energy to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including, but not limited to, the Interconnection Agreement required to deliver Energy to the Point of Delivery;

(3) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this PPA;

(4) Seller's failure to maintain in effect any agreements required to deliver Solar Energy Output to the Point of Delivery;

(5) Seller's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Buyer; or

(6) Seller fails to register the Project within WREGIS or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this PPA.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this PPA, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations

hereunder; *provided, however*, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors; or

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise.

(4) Buyer's assignment of this PPA except as permitted in accordance with Article 18.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer. or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(2) Any representation or warranty made by Buyer in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an uncured Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this PPA from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security, and (v) exercise its rights to terminate this PPA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material performance obligation of the other Party under this PPA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, either Party may send the other Party an invoice for such damages or other amounts as are due to the Party providing the invoice at such time from the other Party under this PPA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this PPA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

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ARTICLE 13
Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed) to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this PPA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this PPA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this PPA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this PPA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; House Energy

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consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) quarterly construction progress reports until the start of construction and monthly thereafter in such form as may be agreed to by Buyer in accordance with Sections 10.1(A) and 10.1(B), and (ii) reports, of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Solar Energy Output from, the Project in accordance with this PPA, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this PPA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Solar Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the Solar Units.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its

obligations or potential liabilities under the Project contracts and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3)

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Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

ARTICLE 14
Force Majeure

14.1 Definition of Force Majeure Event.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises, after the Execution Date , that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic, including COVID-19, shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this PPA is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Solar Energy Output of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other

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mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws or material or serial defects; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of three hundred sixty five (365) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this PPA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

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14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Solar Energy Output from the Project or to deliver Solar Energy Output from the Project, then any lost production (MWh) during the Force Majeure Event shall be excluded from the determination of the Monthly Solar Output Payment as set forth in Section 8.1.

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a [●]duly organized, validly existing and in good standing under the laws of the State of [●]. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary [●] action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any material violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have upon the generation of Solar Energy Output, good and marketable title to the RECs, Environmental Attributes, and Future Environmental Attributes.

(K) Seller has not sold, delivered or transferred the RECs, Environmental Attributes or Future Environmental Attributes to any other Person, in whole or in part.

(L) All right, title and interest in and to the RECs, Environmental Attributes and Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, §§ 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this PPA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular

purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(P) This PPA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(Q) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a

party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1, and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

ARTICLE 16
Insurance

16.1 Evidence of Insurance. Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G-1 and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the Term of this PPA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G-1 within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this PPA, to request Seller to modify the insurance minimum limits specified in Exhibit G-1 in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide

Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this PPA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G-1 names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G-1 shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17
## Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the PPA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this PPA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval, in connection with (i) the execution and performance of this PPA; (ii) a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement; and (iii) any

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waivers as set forth in Buyer's request for approval of this PPA (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to a motion for rehearing or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller, Retail Customer and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this PPA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This PPA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if neither Buyer nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made by Buyer or Retail Customer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this PPA should remain in effect. Upon automatic termination, this PPA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA. If the Parties and Retail Customer are unable to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties and Retail Customer conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by [●] ("**Regulatory End Date**"), then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no

further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

## ARTICLE 18
## Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this PPA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA.

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided*

that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this PPA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this PPA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this PPA with the Affiliate as if such Person had been named under this PPA; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this PPA made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this PPA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this PPA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this PPA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this PPA to Seller's Lenders pursuant to this Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the

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form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this Agreement.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed Solar Capacity ("**Development Security"**) within the earlier of (i) ninety (90) Days after the Execution Date and (ii) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Fifty Thousand Dollars ($150,000) per MW multiplied by the Guaranteed Solar Capacity (the "**Delivery Term Security**"). Seller shall replenish the Development Security and Delivery Term Security, as applicable, to such required amount within fifteen (15) Days after any draw by Buyer. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or Capacity Shortfall Damages and provided the Delivery Term Security. In the event that no amounts are due and owing under this PPA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) day after termination of this PPA in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) days of expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable

Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this PPA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this PPA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this PPA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this PPA, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this PPA.

## ARTICLE 20
## Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential

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damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses, and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for

which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21
## Governmental Charges

21.1 Allocation of Governmental Charges. In the event of any contradiction between this Section 21.1 and Section 9.7, Section 9.7 shall control. In the event of any contradiction between this Section 21.1 and Section 22.2, this Section 21.1 shall control. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Solar Energy Output that are imposed on the making available of Solar Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Solar Energy Output that are imposed at and from the taking of Solar Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

## ARTICLE 22
## Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall

pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956); and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Certain Third Party Beneficiary Rights.

(A) In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly permitted in this PPA in Section 22.4(B), nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this PPA, Retail Customer is an express third-party beneficiary to this PPA. The provisions of this PPA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as an express third party beneficiary hereof as if it were a Party hereto. In addition, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer a copy of any notice of a change in the location of the Site provided to Buyer under Section 3.3;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project; and

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the PPA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the PPA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed.

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to its employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any

Governmental Authority with jurisdiction over this PPA, this PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

22.12 Counterparts. This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this PPA shall be brought in a court of competent jurisdiction in Albuquerque, New Mexico. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS PPA. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "**Receiving Party**" refers to the Party receiving information from the other Party.

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, tax credit transferees, technical advisors, contractors, consultants, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as

permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this PPA, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this PPA that relates solely to this PPA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before

negotiation of this PPA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall notify Buyer as soon as reasonably practicable of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("**Data Breach**") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access. Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this PPA and the Environmental Attributes that are to be generated under this PPA and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the

Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this PPA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this PPA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s) (if any), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement.. The Parties intend that this PPA constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(II).

22.18 Accounting Matters The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's

financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the PPA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the following provisions apply for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance

with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

(F) Seller shall provide Buyer all such information as Buyer shall reasonably request for Buyer or Retail Customer compliance with the Scope Reporting Rule.

22.19 Telephone Recording. Each Party to this PPA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this PPA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this Agreement in accordance with Section 12.4. In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and

records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any actual, potential, threatened, or requested breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Governmental Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. Seller will ensure that the contractors and subcontractors it retains in connection with this PPA expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to an Event of Default under Section 12.1(B), Buyer shall have no obligation to make further payments hereunder following termination of this Agreement other than all payments due to Seller during the Term of this Agreement as of such termination date.

22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party to be responsible for, exporting and importing any equipment or property Seller or Seller Parties require to perform the services under this Agreement, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority.

(B) In no instance may Seller or Seller Parties list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List, or (ii) originated, offloaded or transferred to a different ship or carried in any Sanctioned Territory.

(D) The Seller shall provide to Buyer all Trade Control related documentation as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with) or respond to inquiries from any Government Authority in relation to, Trade Controls.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not (directly or indirectly) engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned

Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure that the Seller Parties it retains in connection with the performance of its obligations under this Agreement expressly agree in writing to the trade controls undertakings, representations, and warranties substantially similar to the provisions in this Section 22.21.

(H) Notice. If (a) Seller becomes aware that any breach of the terms of this Section 22.21 has occurred, is likely to occur, or (b) Seller or any Seller Party has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days of obtaining knowledge thereof.

(I) Excusal and Release. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal or not reasonably practicable under Sanctions.

(J) Subject to Section 12.1(B)(8), Buyer may terminate this Agreement, within five (5) days and without further liability, upon written notice to the Seller, if the Seller has breached this Section 22.21 (A), (B), (C), or (E) in which case, the Buyer shall have no obligation to make further payments following termination of this Agreement; provided that to the extent permitted by Sanctions, Buyer has made all payments due to Seller during the Term of this Agreement as of the termination date.

22.22 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, Retail Customer's load or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this PPA, the Parties and Retail Customer shall negotiate in good faith to amend this PPA to resolve such changes in order to effect performance of this PPA, at the least possible cost to the Parties and Retail Customer, consistent with this PPA, including Section 7.4(A).

*[Signature page(s) follow]*

INB3522875

IN WITNESS WHEREOF, the Parties have caused this PPA to be duly executed as of the date first above written. This PPA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

Name [●]

Title [●]

[●]

By: _____

Name: [●]

Title: [●]

INB3522875

**EXHIBIT A**
(to Power Purchase Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: [●]

2. Location: [●]

3. Owner (if different from Seller): [●]

4. Operator: Seller or Affiliate thereof

5. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): [●]

   b. Total number of units at the Project: [●]

   c. Total nameplate capacity (MWp): [●]MWdc

   d. Total capacity at point of delivery: [●] MWac

   e. Additional technology-specific information: [●]

6. Project Schedule:

| Key Milestone | Date |
|---|---|
| LGIA Execution | |
| Major Equipment Supply Agreements Executed | |
| Discretionary Permits | |
| Close Financing | |
| 30% Design Complete | |
| Start of Project Construction | |
| First Major Equipment Delivered to Site | |
| Interconnection In-Service Date | |
| Commissioning Start Date | |
| Expected Commercial Operation | |
| Guaranteed Start Date | |

INB3522875

7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.

**Site Map**

INB3522875

**EXHIBIT B**
(to Power Purchase Agreement)

**ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram and communications and telemetry diagram of the Project. The diagrams indicate the following:

   - Interconnection Facilities;
   - the network upgrades;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
   - communications and telemetry configuration with associated redundancy;
   - the House Energy power source and associated dedicated electric meter, and redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is [●].

INB3522875

**Single Line Diagram**

INB3522875

**EXHIBIT C**
(to Power Purchase Agreement)

**DESCRIPTION OF SITE**[1]
[●]

SURVEYOR'S DESCRIPTION of: [●], State of New Mexico, and being more particularly described as follows:

The above described Tract of Land contains [●] acres more or less in area.

[1] NTD: To be updated ~60 days prior to COD.

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**EXHIBIT D**
(to Power Purchase Agreement)

**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF NEW MEXICO** [●]

**Notices:**
**Delivery Address:**
Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

**Invoices:**
Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:
PNMEAM@pnmresources.com

**Scheduling:**
Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

**Payments:**
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

**Wire Transfer:**
Wells Fargo Bank
ABA# [●]
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

**All Notices/Invoices:**
**Delivery Address:**
[●]
Attn: [●]
Phone: [●]

With copy to:
[●]
Attn: [●]
Phone: [●]

Mailing Address (if different from above):

**Wire Transfer:** [●]

**With additional Notice of an Event of Default, termination and other legal notices to:**
[●]
Attn: [●]
Address: [●]
Phone: [●]

Attn: [●]
Address: [●]
Phone: [●]

**Project Manager:**
[●]
Attn: [●]
[●]

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**Contract Manager:**
Public Service Company of New Mexico
Attention: [●]
2401 Aztec Rd. NE
Albuquerque, NM 87107
Telephone: (505) [●]
Fax: (505) [●]

**With additional Notice of an Event of Default, termination and other legal notices to:**
Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

**With a copy to:**
Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

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**EXHIBIT E**
(to Power Purchase Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

| PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION | GOVERNMENTAL ENTITY |
|---|---|
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NOTE: Final actual permit requirements may vary from the above listings due to code and regulatory requirements as needed for Project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of this PPA.

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# EXHIBIT F

(to Power Purchase Agreement)
**COMMISSIONING AND ANNUAL TESTS**

**Commissioning Tests**

- String Insulation Resistance and Continuity Tests
- String $V_{oc}$ measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- SCADA Functionality Test (or equivalent)
- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- Voltage Setpoint Functionality Test
- Historian Data Link Functionality Tests (See Section 3.4)
- Project Reliability Test
- Commissioning Performance Test (See Section 10.8)

**Annual Tests**

- Annual Performance Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

**A.** SCADA Functionality Test

- 

**Purpose:**

This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering ("**POE**"). This test must be performed prior to energization of the Project.

**Procedure:**

Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall then contact Buyer's POE Team 4-6 weeks in advance to submit a database modification request (DBMOD) and request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. Testing phases 1-3 (below) require only POE contacts, but phase 4 will also require Buyer's Operator support.

The test shall include, but is not limited to, the following verification:

1) Status points

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- Verify POE is receiving the intended state of Seller's switches and breakers
- Verify POE can see and change the value of states of Seller's switches and breakers
- Verify the functionality of the local/remote mode indication status

2) Analog points
   - Verify POE is receiving the intended value
   - Verify POE receives a changed value
   - Verify values have the correct scaling

3) Accumulator points (as applicable)
   - Verify POE is receiving an inserted value
   - Seller reverts to original value then verifies POE receives the new value
   - Verify values have the correct scaling

4) Control points (as applicable)
   - Verify the functionality of all breakers to be controlled by Buyer's POE
   - Verify the functionality of all switches to be controlled by Buyer's POE
   - Verify POE can control all reclosers
   - Verify on-site personnel have capability of changing states and values
   - Verify the functionality of all Setpoints
   - Verify the functionality of all feedback points

Completion of this test will be acknowledged verbally between Buyer's personnel and the stakeholders involved. This test must be repeated for changes to the states table(s) and/or list of points.

**B.** Automatic Generation Control (AGC) Functionality Test

**Purpose:**

This test will demonstrate the ability of the Project to synch to AGC. This test will occur after the Project has energized.

**System starting state:**

The Project will be in the on-line state and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("**EMS**") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

**Procedure**:

Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team four (4) to six (6) weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end

of hour operational activities.

**Remote Mode Testing**

Seller will set the Project to REMOTE mode, and verify the Project accepts AGC.

- Operator will send a setpoint to the Project
- Validate the Project responds to the setpoint
- Operator will send a setpoint above and/or below Project operation limits
  - Validate the Project sends alarms

Buyer's Operator will set the AGC Control mode to MARKET:
- Validate the Project responds to a DOT from CAISO
- Validate the setpoint and feedback matches the DOT

Buyer's Operator change the Project to MARKET in AGC
- Validate the Project changes the control mode

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG
- Hold for up to 10 minutes
- Validate the Project responds to ACE of +/- 10 MW

**Local Mode Testing**
On-site personnel change the Project to LOCAL mode
- Validate the Project changes from REMOTE to LOCAL mode
- Validate the Project follows gross MW requested on-site
- Validate the Project does not respond to setpoint changes

**System end state:**
The Project will be in the on-line state and with control mode set to LOCAL.

**C.** Voltage Setpoint Functionality Test
**[LATER]**

**D.** Buyer Data Link Functionality Test

The Buyer Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Project control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party), and assist as necessary to set up the Buyer Data Link.

Seller shall prepare and submit to Buyer a Data Link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Buyer Data Link Functionality Test procedure and Seller shall perform

and successfully demonstrate the Buyer Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

**E.** Project Reliability Testing

**D.1 Operational Reliability**

A. Purpose of Test

To demonstrate the short-term reliability of the Project.

B. Test Procedure

The Project shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the Project remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any alarms, faults, trips, or manual intervention required.

**F. Performance Testing**

**Purpose**
This Section outlines the procedures and requirements for the Commissioning Performance Test and the Annual Performance Tests (each, a "Performance Test"), and will verify the plant is operating according to specification by achieving the Guaranteed Solar Capacity during the Commissioning Performance Test and the Annual Performance Test Guarantee during the Annual Performance Tests, under and pursuant to Section 10.9(A) of this PPA.

**Definitions**

"Annual Degradation" – The agreed upon annual AC degradation rate of the system is as defined in Section 10.8(C) and Exhibit K of the PPA.

"Annual Performance Test PVSYST Model" – The Annual Performance Test PVSYST Model including any post-processing that is based on the as-built drawings and adjusted for degradation, soiling, and albedo as discussed within this Exhibit F. The model will include the Annual Degradation, measured albedo and soiling during the test and remove any assumptions for snow and availability.

"Annual Performance Test Guarantee" – An average Performance Test Guarantee Ratio of at least

ninety-five percent (95%).

"Minimum Data Points" – Occurs when at least 150 allowable 5-minute qualifying data points meeting the requirements set forth in this Exhibit F are recorded after all data filtering has occurred as outlined herein.

"Model Rated Power" – The value produced by the regression of filtered PVSYST model power and filtered model weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Model Rated Power as calculated shall account for losses to the Point of Delivery and shall be determined using the procedures outlined herein. Parties shall work in good faith to adjust losses in the event they are impacted by additional project phases on a shared line. Regression of Model Rated Power data points shall be performed for the thirty (30) Days centered about the Performance Test Measurement Period and for data points that are within +/- 20% of the Reporting Condition Total Plane of Array Irradiance.

"Reporting Conditions" – The Total Plane of Array Irradiance ($POA_{total}$), ambient temperature, and wind speed calculated by taking the median of the measured data set during the Performance Test Measurement Period will be used as the reporting conditions using the procedures outlined in general accordance with ASTM E2939 and this Exhibit F.

"Performance Test Measurement Period" – The period when the Performance Test is performed, which period shall be at least five (5) Days and shall continue for consecutive additional Days until the Minimum Data Points have been met, which may be up to a total of ten (10) days, depending on weather conditions during the test. If after ten (10) Days the Minimum Data Points have not been achieved, the data collected will be used provided at least 150 qualifying data points of five-minute duration have been collected. Notwithstanding the above, if the Parties mutually agree that a sufficient quantity of qualifying data points have been collected during a test to determine an accurate test result, the duration of the Test and the quantity of required qualifying data points required herein may be reduced.

"Performance Test Ratio"– The Test Rated Power divided by the Model Rated Power, calculated to the nearest 0.1%.

"Revenue Meter" – The revenue meter for the Project shall be the revenue grade Primary Metering Device installed at the high side of each GSU, or as otherwise mutually agreed by the Parties.

"Test Rated Power" – The value produced by the regression of filtered site measured power and site measured weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Test Rated Power of the Project shall account for losses to the Point of Delivery and shall be calculated using the procedures outlined herein.

"Total Plane of Array Irradiance ($E_{TOTAL}$)" – The sum total of the front plane of array irradiance and the rear plane of array irradiance multiplied by the Bifaciality Factor of the modules as shown in Equation 1 below. For Test Rated Power the $E_{REAR}$ will also be multiplied by the Rear Shading Factor defined in Table 2 of Appendix 2 to account for loss between the rear POA sensor and the module.

Equation 1:

$$E_{TOTAL} = E_{POA} + E_{REAR} * \varphi * R_{SH}$$

Where

$E_{POA}$ = Measured front side POA
$E_{REAR}$ = Measured rear side POA
$\varphi$ = Bifaciality Factor as defined on the manufacturer's datasheet
$R_{SH}$ = Rear shading factor

In the event monofacial panels are used, Parties will work in good faith to modify this equation accordingly.

**Performance Test Procedure**

1. Battery system will be turned off over testing interval. In the event battery impacts performance or completion of test, parties will work in good faith to cease battery operations or modify procedure.
2. At least one hundred twenty (120) Days prior to the first day of the first Performance Test Measurement Period, a draft Performance Test Plan, including a detailed Performance Test Procedure shall be submitted to the Buyer by the Seller for Buyer's review and comment. The Performance Test Procedure shall:
   - 2.1. be in general accordance with ASTM E2848 and ASTM E2939 or other ASTM standards as mutually agreed by the Parties;
   - 2.2. include the PVSyst model to be utilized for determination of Model Rated Power. The PVSyst model for the Commissioning Performance Test shall result in a total Annual Generation Forecast that meets or exceeds the Annual Generation Forecast included in Exhibit L;
   - 2.3. include the 8760 generation forecast resulting from the PVSyst model, including the following columns;
     - 2.3.1. Date & Time (MM/DD/YYYY hh:mm)
     - 2.3.2. Plane-of-Array Irradiance Front (Globinc, W/m2)
     - 2.3.3. Plane of Array Irradiance Rear (GlobBak, W/m2)
     - 2.3.4. Module Temperature (TArray, °C)
     - 2.3.5. Ambient Temperature (TAmb, C)
     - 2.3.6. Near Shadings Beam Loss (ShdBLss, W/m2)
     - 2.3.7. Inverter Limitation due to Minimum Voltage (IL_Vmin, kW)
     - 2.3.8. Inverter Limitation due to Maximum Power (IL_Pmax, kW)
     - 2.3.9. Available Energy at Inverter Output (EOutInv, kW)
     - 2.3.10. Energy Injected into Grid (E_Grid, kWh)

2.4. include the linear regression coefficients for the full 8760 generation forecast; and

2.5. include a completed Appendix 2 of this Exhibit F, including the PVSyst model inputs and assumptions utilized in the PVSyst model.

Seller shall incorporate all of Buyer's reasonable comments into the final Performance Test Plan and Performance Test Procedure and resubmit the same for Buyer's confirmation of conformance with this Exhibit F and applicable ASTM standards (such approval not to be unreasonably withheld or delayed).

3. The Seller shall give written notice to the Buyer in accordance with Section 10.2 of this PPA for the Commissioning Performance Test and at least ten (10) Business Days prior to the start of any Annual Performance Test.

4. Seller shall perform the Performance Test in accordance with the final approved Performance Test Procedures described within this Exhibit F and any agreed modification thereof.

5. Performance Test Procedures shall identify the final Reporting Conditions and Model Rated Power using the Annual Performance Test PVSYST Model, and data filters described below.

6. The following input parameters shall be measured during the Performance Test (collectively, the "Input Parameters"):

- Front Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the front side of the PV array in the Project during the qualifying data points. Any significant shading during any aggregation interval is cause to exclude that data record from the regression.
- Rear Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the rear side of the PV array in the Project during the qualifying data points.
- Ambient Temperature: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit F.
- Wind Speed: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit F.
- Soiling: Soiling loss in the Annual Performance Test PVSYST Model shall utilize the lesser of (i) the measured value during the test, (ii) values measured on site from mutually agreed PV array samples or (iii) a value of 1.25% or otherwise as mutually agreed by the Parties.
- Revenue Meter Energy Generation: Energy as recorded by the Revenue Meter and accounting for losses to the Point of Delivery during the Performance Test Measurement Period.
- Inverter-Level Power Generation: AC output data for each inverter shall be provided for the purposes of identifying periods of inverter clipping.
- Inverter-Level Power Factor: Power factor output data for each inverter shall be provided for the purposes of identifying periods of inverters performing outside of the designed power factor threshold.

7. During the Performance Test Measurement Period, irradiance, power generation and other data shall be reported at no greater than one (1) minute intervals, consisting of averaged sampled data. All data shall be reported in time-synchronized intervals.

8. Data shall be averaged and filtered in accordance with the procedures below:

   8.1. Missing Data: Missing records shall be marked as missing with a non-numeric identifier. Missing records shall not have a value included in the analysis but shall be documented. At least 75% of plane of array sensors for each measured parameter must be operational to consider data points as valid.

   8.2. DAS Equipment Malfunction: Data records with invalid Input Parameters (e.g. all sensor readings reported as out of range by the DAS) shall also be marked as invalid. If more than a few averaging intervals in a data collection period are affected by DAS errors or equipment malfunctions, Seller shall investigate and resolve this condition prior to proceeding with the test.

   8.3. Below Minimum Irradiance: To avoid large uncertainty in results due to increased impact of variable losses at low irradiance, all records with a minimum Total Plane-of-Array Irradiance input parameter of 400 $W/m^2$ or less shall be marked as irradiance too low and the data will not be used in the test. This shall be in addition to the ASTM2848-9.1.6 Irradiance Out of Range requirement.

   8.4. Unstable irradiance: Irradiance measurements shall be deemed stable if i) all individual sensor readings are within 10% of the average of all the sensor readings and ii) the average of all sensor readings is not more than 50 Watts per meter squared greater or less than the previous interval reading. If both conditions above are not met, the irradiance will be deemed unstable, flagged and the data will not be used in the test. This filter may be adjusted to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

   8.5. Inverter Clipping: Any intervals where the power output of one (or more) inverters is greater than 98.0% of the rated or programmed power limit. This data will be excluded from the test data.

   8.6. Meter Clipping: Any interval where the power output of the Revenue Meter is greater than 98.0% of the rated Point of Interconnection limit of the Project. This data will be excluded from the test data.

   8.7. Power Factor: Any intervals where the inverter power factor is less than ±0.95 will be excluded from the test data. This filter may be adjusted/removed to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

   8.8. Array shading by internal (array self-shading) or external (nearby objects). A schedule of expected shade times shall be defined in the Performance Test Procedures. This schedule may be altered during the Performance Test. Internal shading occurring during these shade intervals identified during testing shall be noted and considered as included in the design. Photographic evidence of array conditions shall be provided.

   8.9. Array shading by environmental conditions (e.g. frost, snow or debris). Onsite observers shall record time intervals when such conditions exist as the Performance Test progresses.

Photographic evidence of array conditions shall be provided and records occurring during these shade intervals identified during testing shall be marked as shaded and excluded from the test.

8.10. Wind Speed: Any intervals where average wind speed is greater than 15 meter per second, trackers go into a stow position or the panels are placed into hail stow due to a hailstorm will be excluded from the test data. This filter may be adjusted/removed to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

8.11. Any intervals impacted by system outages will be excluded from the test data including a) curtailment of the Project, b) shut down for maintenance, c) disconnection of the Project from the grid, d) power regulation by the grid operator, e) a Force Majeure Event, or f) any time when the Project is not 100% available.

9. Data will be collected until, at a minimum, the Minimum Data Points have been achieved.

10. Using the data filtering described herein, calculate the linear regression coefficients and Test Rated Power.

11. Only data from records where input parameters are valid and within specified limits shall be used in computing capacity estimates.

12. Calculate the Performance Test Ratio using the calculated Test Rated Power and appropriate Model Rated Power. For clarity, the Test Rated Power and Model Rated Power calculations are performed in accordance with ASTM E2848 guideline, however, all procedures outlined herein will take precedence over the ASTM E2848 guidelines.

13. Seller shall not apply test tolerances or measurement uncertainty to the test data or model results. Seller shall strive to minimize test tolerance and measurement uncertainty.

14. If the Performance Test Rating of the Project does not meet or exceed the Guaranteed Solar Capacity during the Commissioning Performance Test or the Annual Performance Test Guarantee during an Annual Performance Test, the Seller may re-conduct the test in accordance with Section 10.8(E) of the Agreement.

Restrictions and exclusions that prevent or inhibit performance or completion of a scheduled test, as outlined in this procedure (i.e. too low irradiance over the specified interval, too many excluded intervals) shall result in rescheduling of the applicable Performance Test.
The Performance Test Procedures provided by Seller to Buyer shall include (at a minimum) the following information:

- This test procedure
- Identification of key personnel and parties to be involved in the test
- The applicable Performance Test PVSYST Model
    - For the purposes of the Performance Test, the Annual Performance Test PVSYST Model shall include module/system Annual Degradation and assume 100% availability.
    - Meteorological data
- Identification of the Project under test (at a minimum)
    - Number and make/model of PV modules

  - Array orientation
  - Location (latitude, longitude, street address)
  - Racking type and tilt
  - Tracker range of motion (if applicable)
  - Number and make/model of Inverters
  - Row to row spacing (ground coverage ratio)
- Identification of all data points to be monitored during the test
- The starting and ending dates of the scheduled Performance Test Measurement Period.
- Table of all sensors and transducers to be used, including cut sheets, calibration records, map of sensor locations with sufficient detail to allow observers to locate the sensors and transducers. This includes sensors required for all applicable Input Parameters (MET station sensors, inverters, and Revenue Meter).
- Calibration records for all instrumentation, sensors, and transducers used for the test verifying that such calibration has been performed within 12 months of the test or other such shorter period of time as may be recommended by the device manufacturer.
- All data identified in Appendix 2 to this Exhibit F.

Measured data is to be made available to the Buyer upon request during the Performance Test Measurement Period, for use in evaluating the progress of the Performance Test.

**Performance Test Report**

No later than fifteen (15) Business Days following the end of the Performance Test Measurement Period (as such may be repeated due to a re-test, if applicable), a Performance Test Report will be submitted to the Buyer by the Seller. Buyer shall have ten (10) Business Days to accept or reject the results of the Performance Test Report, and provide in writing any comments of Buyer on such Performance Test Report. In the event that Buyer rejects all or any part of the draft Performance Test Report, Seller shall, within five (5) Business Days thereafter address any comments of Buyer and re-submit the Performance Test Report to Buyer. This procedure shall continue until Buyer accepts the Performance Test Report. Any dispute regarding the results of the Performance Test or the Performance Test Report shall be resolved as indicated in the Agreement. The Commercial Operation Date shall otherwise be determined in accordance with Section 3.10 of the PPA.

The Performance Test Report shall contain:

- The Performance Test Procedures, including all requirements as outlined herein.
- The actual start and end date/times of the Performance Test Measurement Period
- Parties present for the execution of the Performance Test
- Comments on environmental conditions during the Performance Test Measurement Period that affect the results of the test
- Performance model simulations, including all inputs, functional calculations and results
- Summary of test results
- Regression coefficients used to calculate Model Rated Power and Test Rated Power
- Comparison of test results with Annual Performance Test Guarantee.

All raw data used as input to the Performance Test shall be provided electronically (via CSV, XLS, or XLSX formats) to the Buyer with the Performance Test Report.

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# EXHIBIT F - APPENDIX 1:
# ADDITIONAL REQUIREMENTS

**Sensor Requirements**

Front plane of array irradiance sensors shall be at a minimum "High Quality" classified pyranometer(s) as defined in ASTM2848-A1.2 (Secondary Standard per ISO 9060). Pyranometers shall include device-specific characterization data that shall, at minimum, include cosine and temperature response. Alternative pyranometers may be used if necessary.

Pyranometers shall be used only within their valid calibration period and shall be cleaned at the start of the Performance Test Measurement Period and cleaned daily during the test if the Performance Test Measurement Period extends beyond one (1) week. Rear plane of array irradiance may be measured using either a high-quality reference cell (module) or a "High Quality" classified pyranometer(s) as defined in ASTM2848-A1.2 (Secondary Standard per ISO 9060).

| Measurement | Instrument Type | Test Function | Range | Accuracy |
|---|---|---|---|---|
| Plane of Array Irradiance | Front Facing Pyranometer Rear Facing Pyranometer | Primary for Performance Test | 0 to 1600 W/m$^2$ 285 to 2800 nm | ±2.0% daily |
| Global Horizontal Irradiance | Pyranometer | Tertiary for Performance Test | 0 to 1600 W/m$^2$ 285 to 2800 nm | ±2.0% daily |
| Ambient Air Temperature | Temperature Probe | Primary for Performance Test | -40°C to +60°C | ±1°C |
| Wind Speed | Sonic Wind Sensor | Primary for Performance Test | 0 – 60 m/s | ±5% |
| PV Plant Power | PV Power Revenue Meter | Primary for Performance Test | 0 to PV Power Plant size +20% | ANSI C-12.20 |
| Inverter Power | Inverter Meter | Primary for Performance Test | determined from inverter data sheet | determined from inverter data sheet |
| Soiling Loss | Soiling Stations<br>In-Field IV Curve | Primary for Performance Test<br>Secondary for Performance Test | 0 to 100% | |

**Multiple Measurements**

Multiple Measurements shall be recorded for all environmental data throughout the Site in order to capture the operating conditions for all regions of the array.

Below are the main sensors to be used in the Performance Test:

- Front and rear plane of array irradiance (POA): Plane of Array readings shall be averaged from sensors installed.
- Ambient Air Temperature: Ambient temperature readings shall be averaged from sensors installed.
- Wind Speed: wind speed sensors shall be averaged from sensors installed.

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- Soiling Station: At least four soiling stations, averaged readings will be used for multiple stations.
- Albedometer: At least four albedometers, averaged readings will be used for multiple sensors.
- Inverter Meter: The power and power factor reading for each inverter.
- PV Plant Meter: The power reading of the Revenue Meter.

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# EXHIBIT F - APPENDIX 2:
# PERFORMANCE TEST PVSYST MODEL AND REPORTING CONDITIONS DEFINITION

**Performance Test PVSYST Model**

The requirements for the Performance Test PVSYST Model to be used for evaluating the Test Rated Power is detailed in this Exhibit F. This section outlines all input parameters required to create the PVSYST simulation, in the event that PVSYST electronic project files are no longer available. This section shall be populated and submitted with the Performance Test Procedures.

The Performance Test PVSYST Model and the post-processed 8760 generation forecast accounting for any losses outside of the model shall be included within this Exhibit F. Post-processed losses shall be specifically identified in the 8760 forecast.

For Annual Performance Tests, the Performance Test PVSYST Model will be updated to the Annual Performance Test PVSYST Model prior to running the Performance Test to include the Annual Degradation.

**PVSYST Model Files**

Table 2-1 below provides the file names for all model files necessary to run the PVSYST simulation in the PVSYST version specified in the subsequent section. Seller shall provide all Annual Performance Test PVSYST Model files to the Buyer including all files required to recreate the PVSYST modeling files including .ond, .pan, .shd, .met, .prj and .vc files. The PVSYST version, report, and output 8760 based on the specified TMY Meteorological data source shall be provided.

Table 2-1: PVSYST File Names

| PVSYST File Type | File Name |
|---|---|
| Project | To be provided |
| Variant 1 | To be provided; aligns with primary module |
| Variant 2 | To be provided; aligns with secondary module |
| Site | To be provided |
| Meteorological | To be provided |
| Panel | To be provided |
| Inverter | To be provided |

**PVSYST Input Parameters**

This section documents all PVSYST inputs and assumptions. Table 2-2 below provides many of the PVSYST inputs required in the simulation.

Sixty (60) Days prior to performance testing of any portion of the solar project, the corresponding

PVSyst model and inputs with the resultant 8760 generation forecast shall be submitted with the test procedure for Buyer review. Testing and approval for Commercial Operation will require that a PVSyst model and associated inputs and results be provided that represents the capability to fulfill a minimum total annual generation of [*] GWh per year (as identified in Exhibit L) on a P50 probability basis as adjusted year over year for any applicable degradation.

Seller shall provide justification and supporting documentation for all of the circuit ohmic losses, inverter losses, transformer losses, and auxiliary loads identified in Table 2-2.

**Table 2-2: PVSYST Input Parameters**

| Input Parameter | Value | Comment |
|---|---|---|
| PVSYST Software Version | | |
| Transposition Model | | |
| Meteorological File | | |
| Latitude / Longitude | | |
| Altitude [m] | | |
| Array Orientation (PVSYST Field Type) | | |
| Tilt | | |
| Azimuth | | 0° is due South |
| Tracker Backtracking | | |
| Min / Max Rotation Angle | | |
| Number of sheds | | |
| Ground Cover Ratio (GCR) | | |
| Pitch [m] | | |
| Primary Module | | |
| Secondary Module | | |
| Collector width [m] | | |
| Primary Module | | |
| Secondary Module | | |
| Inactive band, Left (m) | | |
| Inactive band, Right (m) | | |
| Near Shading Type | | |
| Electrical Effect | | |
| Number of strings in row width | | |
| Horizon | | |
| Module Type | | |
| Primary Module | | x% primary module |
| Secondary Module | | y% secondary module |
| Qty. of modules | | |

| Input Parameter | Value | Comment |
|---|---|---|
| Primary Module | | |
| Secondary Module | | |
| Qty. of modules per string | | |
| Primary Module | | |
| Secondary Module | | |
| Qty. of parallel strings | | |
| Primary Module | | |
| Secondary Module | | |
| Inverter Type | | |
| Qty. of inverters | | |
| Inverter Loss | | |
| Heat Transfer: Constant loss factor | | |
| Heat Transfer: Wind loss factor | | |
| DC circuit ohmic loss at STC | | |
| Module Bifaciality Factor | | From datasheet (not PAN file) |
| Primary Module | | |
| Secondary Module | | |
| Module Quality | | |
| Primary Module | | |
| Secondary Module | | |
| Mismatch [%] | | |
| Primary Module | | |
| Secondary Module | | |
| LID – Light Induced Degradation [%] | | |
| Primary Module | | |
| Secondary Module | | |
| Soiling Loss [%] | | |
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |

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| Input Parameter | Value | Comment |
|---|---|---|
| October | | |
| November | | |
| December | | |
| Annual Average | | |
| Incidence Angle Modifier Factors or ASHRAE b0 value | | |
| Rear Transparency | | |
| Primary Module | | |
| Secondary Module | | |
| Rear Shade Loss | | |
| Primary Module | | |
| Secondary Module | | |
| Rear Mismatch | | |
| Primary Module | | |
| Secondary Module | | |
| Module Mounting Height | | |
| Monthly Surface Albedo | | To be measured during Capacity Test. If a reliable measurement is not available the assumed albedo in the Project Model will be used, exclusive of any adjustment for snow on the ground. If snow or partial snow on the ground occurs during the Capacity Test Measurement Period, provisions will be made to ensure measured albedo is representative of the albedo for the entire site or the data will be removed. |
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |

| Input Parameter | Value | Comment |
|---|---|---|
| Annual Average | | |
| Auxiliary Loads [%] | | |
| Nighttime Loads [%] | | |
| AC circuit ohmic loss at STC [%] | | |
| AC circuit MV ohmic loss at STC | | |
| External MV Transformer No Load Loss [%] | | |
| External MV Transformer Full Load Loss [%] | | |
| AC circuit HV ohmic loss at STC | | |
| Terrain Loss [%] | | |
| External HV Transformer No Load Loss [%] | | |
| External HV Transformer Full Load Loss [%] | | |

**Additional Losses (Post-Processed Loss)**
There are multiple losses associated with an operating Project that may not be accounted for in PVSYST. Auxiliary load consumption shall be separately accounted for in the test results. Treatment of any additional adjustments impacting the Primary Metering Device in the event they impact the overall results of the test shall be as mutually agreed by the Parties.

**Reporting Conditions Identification**
The Reporting Conditions are to be specified based on the measured data set. The following procedure is recommended for identifying Reporting Conditions.

1. The Reporting Conditions shall be determined based on the measured data set. Data records shall include the measured Total Plane of Array irradiance ($E_{Total}$), ambient temperature and wind speed input parameters, as well as any auxiliary parameters necessary for marking data records according to the primary data exclusion criteria.
2. Apply the primary data exclusion criteria identified in Section 8 of this Exhibit F to the measured data records.
3. Grouping the remaining data records, compute the median values of $E_{total}$, ambient air temperature, and wind speed. The reporting condition for $E_{total}$ irradiance shall not be less than 500 W/m², unless otherwise agreed to by the Parties.
4. Round median $E_{total}$ irradiance to the nearest integer W/m², median temperature to the nearest °C, and median wind speed to the nearest 0.1 m/s. The calculated values represent the Reporting Conditions.

**Model Rated Power Identification**

The Model Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure shall be used by the Seller to calculate the Model Rated Power values.

1. To Calculate the Model Rated Power value, update and verify the applicable Performance Test PVSYST Model includes the following parameters:
    a. Availability and Curtailment Losses shall be assumed 0%
    b. Update soiling and albedo values
    c. Calculate Annual Degradation (for Annual Performance Tests)
2. The Performance Test PVSYST Model hourly output, after post-processing, must contain at a minimum the plane of array irradiance, the ambient temperature, wind speed, inverter energy output, modeled power generation, shade loss, and clipping loss (GlobInc, Globbak, TAmb, WindVel, EOutInv, Egrid, POI Limited, ShdBLss, and IL Pmax) respectively. For clarity:

    $$\text{Model } E_{total} = \text{GlobInc} + \text{Globbak}*BF$$

    BF = Module Bifaciality Factor of the bifacial modules used in the Performance Test
3. Procure data records from the Performance Test PVSYST Model.
4. For Annual Performance Tests, adjust total generation output from the Performance Test PVSYST Model to account for the Annual Degradation by multiplying all positive generation intervals by one minus the Annual Degradation.
5. Apply the data exclusion criteria identified in Section 8 of this Exhibit F to the simulation data records.
6. Calculate the regression coefficients for the Performance Test Measurement Period from filtered data with a Total Plane of Array Irradiance within +/-20% of the Total Plane of Array Irradiance Reporting Condition.
5. Calculate Model Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation below:

    $$P_{RC} = E_{RC}(a_1 + a_2 \cdot E_{RC} + a_3 \cdot T_{RC} + a_4 \cdot v_{RC})$$

    Where:
    $P_{RC}$ = Rated Power
    $E_{RC}$ = Total Plane of Array Irradiance Reporting Condition
    $T_{RC}$ = Temperature Reporting Condition
    $v_{RC}$ = Wind Speed Reporting Condition
    a1 to a4 = Regression coefficients

**Test Rated Power Identification**
The Test Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure will be used by the Seller to calculate the Test Rated Power values.

1. Procure measured data records including the meter output and inverter output data
2. Calculate the Test $E_{TOTAL}$

   Test $E_{total}$ = GlobInc + Globbak*BF*RearShade
3. Apply the data exclusion criteria identified in Section 8 of this Exhibit F to the measured data records.
4. Compute regression coefficients for the Performance Test Measurement Period.
5. Calculate the Test Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation.

**Exhibit F-Appendix 3: PVsyst – Simulation Report**

**[To be provided.]**

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**EXHIBIT G-1**
(to Power Purchase Agreement)

**INSURANCE COVERAGES**

Seller shall obtain and maintain the following insurance coverages, at a minimum:

**A. Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

**C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

**D. Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E. Network Security and Privacy Liability**. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

**F. Property Insurance**. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

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**EXHIBIT G-2**
(to Power Purchase Agreement)

**FORM OF ATTESTATION AND BILL OF SALE**

Pursuant to WREGIS, _____ ("Seller") hereby sells, transfers and delivers to Buyer the RECs and Environmental Attributes associated with the generation of Energy at the Project, as detailed in the Power Purchase Agreement between the Parties dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

_____
Name of Renewable Energy Facility

| Fuel Type | Maximum Power Output (MW) | Operation Date |
|---|---|---|
| _____ | _____ | _____ |
| Dates | | MWh generated |
| _____, 20___ | | _____ |

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents as follows:

1. to the best of its knowledge, the information provided herein is true and correct;
2. its sale to Buyer is its one and only sale of the RECS and Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such RECS and Environmental Attributes;
3. the Project identified above produced the number of MWh above during the period indicated above;
4. Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and
5. Seller owns the _____ _____. [Name of the Renewable Energy Facility]

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This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the above referenced Energy.

Contact Person: _____
Phone: _____; Fax: _____

[Seller]

Signed: _____
Name: _____
Title: _____
Date: _____

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**EXHIBIT H**
(to Power Purchase Agreement)

**AVAILABILITY GUARANTEE**

Section 1. **Definitions.**

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the PPA.

"**Actual Solar Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Solar Available Hours for all Solar Units that were part of the Project at the beginning of the relevant Commercial Operation Year for all Daylight Intervals, divided by (ii) the sum of all Solar Period Hours in the relevant Commercial Operation Year for all Solar Units that were part of the Project on the Commercial Operation Date.

"**Actual Solar Energy Output**" means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

"**Aggregate Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Report**" has the meaning set forth in Section 2(5) of this Exhibit.

"**Daylight Interval**" means each hour where plane of array irradiance conditions are 50 W/m2 or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

"**Guaranteed Solar Availability Percentage**" has the meaning set forth in Section 2(1) of this Exhibit.

"**Solar Availability Damages**" has the meaning set forth in Section 2(2) of this Exhibit H.

"**Solar Availability Guarantee**" means the guarantee set forth in Section 2(1) of this Exhibit H.

"**Solar Available Hours**" means for each Solar Unit, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Solar Period Hours in such Commercial Operation Year, minus (b) the aggregate Solar Unavailable Hours for such Solar Unit in such Commercial Operation Year, plus (c) the aggregate Solar Excused Hours for such Solar Unit in such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Available Hours for such hour

shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity of the Solar Unit.

"**Solar Excused Hours**" means, in any Commercial Operation Year, (a) the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year, (b) all hours during which Compensable Curtailment occurs in such Commercial Operation Year, (c) all hours during which any Force Majeure Event occurs in such Commercial Operation Year, and (d) all hours during which Reliability Curtailment occurs in such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity of the Solar Unit.

"**Solar Period Hours**" means the number of Daylight Intervals within any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

"**Solar Unavailable Hours**" means those hours a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Energy to the Point of Delivery. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is unavailable, but for less than the full amount of its installed capacity, the Solar Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

Section 2. **Solar Availability Guarantee.**

1. Solar Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Solar Availability Percentage equal to or greater than ninety-five percent (95%) in each Commercial Operation Year after the Commercial Operation Date ("**Guaranteed Solar Availability Percentage**").

2. Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed Solar Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Guaranteed Solar Availability Percentage minus the Actual Solar Availability Percentage for such Commercial Operation Year (both expressed as a decimal), multiplied by (z) the Actual Solar Energy Output for such Commercial Operation Year divided by the Actual Solar Availability Percentage (expressed as a decimal), multiplied by the Guaranteed Solar Availability Percentage (expressed as a decimal) (the "**Solar Availability Damages**"), but in no event in excess of the Annual Solar Availability Damages Cap and the Aggregate Solar Availability Damages Cap. A sample calculation of the Solar Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Sixty Thousand Dollars ($60,000) per MW of Guaranteed Solar Capacity ("**Annual Solar Availability Damages Cap**") and in the aggregate at a value equivalent to One Hundred and Fifty Thousand Dollars ($150,000) per MW of Guaranteed Solar Capacity ("**Aggregate Solar Availability Damages Cap**") over the Term of the PPA.

4. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed Solar Availability Percentage shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Section 12.1(A)(8) and (9) of the PPA, if and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail to meet the Guaranteed Solar Availability Percentage.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the PPA.

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## ATTACHMENT 1 TO EXHIBIT H

## EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES

Example of Actual Solar Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 50 Solar Units were part of the Project.

The Solar Units had the following operating characteristics:

| | | Hours | Solar Units Affected | Solar Unit Hours |
|---|---|---|---|---|
| | Solar Period Hours ("PH") | 4,000 | 50 | 200,000 |
| | Solar Unavailable Hours ("UH") | | | 5,000 |
| | Solar Excused Hours ("EH") | | | 1,000 |

Given these assumed facts, the Solar Available Hours for the Solar Units during the Commercial Operation Year would be calculated as follows:

Sum of Solar Available Hours = PH – (UH + EH): 196,000 = 200,000 – 5,000 + 1,000

**Actual Solar Energy Availability Percentage**

Given these assumed facts, the Actual Solar Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

(a) Sum of Solar Available Hours: 196,000 hours

(b) Sum of Solar Period Hours: 200,000 hours

(c) Actual Solar Availability Percentage: (Sum of Solar Available Hours/Sum of Solar Period Hours) x 100 = (196,000/200,000) x 100 = 98.0%

II. Example of Availability Damages

Example of Solar Availability Damages based on the following assumed facts:

(a) Seller's Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.

(b) Seller's Actual Solar Availability in Commercial Operation Year 4 = 85%.

(c) Solar Energy Output Payment Rate = $20.00

(d) Actual Solar Energy Output = 130,000 MWh

Given these assumed facts, Seller calculates the Solar Availability Damages due to Buyer as

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follows:

Solar Energy Output Payment Rate x (Guaranteed Solar Availability Percentage in Commercial Operation Year 4 — Actual Solar Availability Percentage for Commercial Operation Year 4 (each expressed as a decimal)) x (Actual Solar Energy Output for Commercial Operation Year 4 ÷ Actual Solar Availability Percentage for Commercial Operation Year 4 x Guaranteed Solar Availability Percentage for Commercial Operation Year 4 (the latter two expressed as a decimal)) = Solar Availability Damage:

$20.00 x (.90 - .85) x (130,000 ÷ .85 * .90) = $137,647.06

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**EXHIBIT I**

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

**A.** WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Power Purchase Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

**B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

**1.** **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

**(a)** Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].

**(b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty

(subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

**2. DEMANDS AND PAYMENT.**

**(a)** If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

**(b)** A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with *Section 9* below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

**(c)** After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

**(a)** it is a limited liability company duly organized and validly existing under the laws of the State of _____ and has the limited liability company power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

**(b)** no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and

**(c)** the execution, delivery and performance of this Guaranty has been duly and validly authorized by all limited liability company proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES;**

**(a)** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**5. AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6. WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

**(a)** Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and , for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty; (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (viii) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

**(b)** No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release

of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

**(c)** Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

**7. REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

**8. TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

**9. NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

| TO GUARANTOR: * | TO COUNTERPARTY: |
|---|---|
| [●]*Attn:* Treasurer | [●]*Attn:* |
| [Tel: [●] -- for use in connection with courier deliveries] | [Tel: [●] -- for use in connection with courier deliveries] |

Any Notice given in accordance with this *Section 9* will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient

on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10. MISCELLANEOUS.**

**(a)** This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.

**(b)** This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty, Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.

**(c)** This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

**(d)** The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

**(e)** Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**(f)** Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

**(g)** COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND

VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

**11.** **THIRD PARTY BENEFICIARY RIGHTS.** This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

* * *

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IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[●]

By:_____

Name:_____

Title:_____

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**EXHIBIT J**
(to Power Purchase Agreement)

**COMMERCIAL OPERATION**
**FORM OF CERTIFICATION**

This certification ("Certification") of Commercial Operation is delivered by _____("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Solar Units with an aggregate capacity of at least [●] MW have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed Capacity and punch list items that do not adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Solar Energy Output and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

| [●] | **[Licensed Professional Engineer]** |
|---|---|
| Signature: _____ | Signature: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| | Date: _____ |
| | License Number and LPE Stamp: _____ |

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**EXHIBIT K**
(to Power Purchase Agreement)

## ANNUAL DEGRADATION GUARANTEES

| Test at Beginning of Commercial Operation Year | Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity) | Maximum % Degradation from Prior Year Actual Degradation |
|---|---|---|
| 1 - Commissioning Test | 100.00% | 0.00% |
| 2 | [●]% | [●]% |
| 3 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 4 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 5 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 6 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 7 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 8 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 9 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 10 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 11 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 12 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 13 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |

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| Test at Beginning of Commercial Operation Year | Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity) | Maximum % Degradation from Prior Year Actual Degradation |
|---|---|---|
| 14 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 15 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 16 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 17 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 18 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 19 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |
| 20 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) [●]% | [●]% |

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**EXHIBIT L**
(to Power Purchase Agreement)

**ANNUAL GENERATION FORECAST**

The following represents the annual P50 forecast of net, AC generation delivered to the Point of Delivery.

On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

| Month | On-Peak Energy Delivered (MWh) | Off-Peak Energy Delivered (MWh) |
|---|---|---|
| January | [●] | 0 |
| February | [●] | 0 |
| March | [●] | 0 |
| April | [●] | 0 |
| May | [●] | 0 |
| June | [●] | 0 |
| July | [●] | 0 |
| August | [●] | 0 |
| September | [●] | 0 |
| October | [●] | 0 |
| November | [●] | 0 |
| December | [●] | 0 |
| Total Annual | [●] | 0 |
| Total Combined Annual | [●] | |
| | | |
| Annual Capacity Factor | [●]% | |

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# EXHIBIT M

(to Power Purchase Agreement)

## PPA FUNCTIONAL MAPPING

The Project's NERC verified PPA Generator Owner, PPA Generator Operator and Scheduling Coordinator Contact functional mapping requirements information is as follows:

| | Entity Name | Point of Contact | E-mail | Phone |
|---|---|---|---|---|
| Generator Owner (GO) | | | | |
| Generator Operator (GOP) | | | | |
| Scheduling Coordinator Contact (SCC) | | | | |

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**EXHIBIT N**
(to Power Purchase Agreement)

**INTERCONNECTION METERING STANDARD**

*Parties will work to develop metering configuration and procedure to account for multiple interconnection agreements that share one generation tie line.*

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# EXHIBIT O
(to Power Purchase Agreement)

## COMMISSIONING AND TESTING PROCESS

Section 1. **Purpose.**

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the PPA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the PPA and complete all testing as defined in Exhibit F of the PPA.

Figure 1 is for reference purposes only.

Section 2. **Identifying Key Points of Contact.**

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the PPA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

**TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.**

| CONTACT | Company | Group | Address | Project Role | Office Phone | Mobile Phone | E-MAIL |
|---|---|---|---|---|---|---|---|
| (name) | PNM | Generation Engineering | 2401 Aztec Rd NE Albuquerque, NM 87107 | Contract Manager | 505-241-XXXX | 505-241-XXXX | …@pnm.com |

The POC List shall identify, but not be limited to, the following:

**Buyer Team:** Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.
- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.
- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.
- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect ("**PCI**") modeling for functionality required for the participating resource schedule coordination ("**PRSC**") (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.
- Power Operations, "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

**Seller Team:** The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- Project Manager – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the generation systems. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.
- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.
- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:
    - Balancing Area Authority (BAA)
    - Transmission Owner (TO)
    - Transmission Operator (TOP)

- Generator Owner (GO)
- Generator Operator (GOP)
- Scheduling Coordinator (SC)
- Distribution System Operator (DSO)

Section 3. **Process Overview.**

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

Section 3.1 **Commissioning Kickoff Meeting.**

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

Section 3.2 **Pre-Commissioning.**

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1:

## TABLE 2: PRE-COMMISSIONING REQUIREMENTS

| Requirement | Description | Responsible Party | Contributor(s) | Timeline for initial delivery |
|---|---|---|---|---|
| **Design Verification** | Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving PPA obligations, including metering, etc. | **Seller** | Generation Engineering | After completion of IFC design phase of project |
| **Seller's SCADA Controls Narrative** | Controls narrative detailing items related to SCADA and telemetry planning. | **Seller** | PowerOps | 120 Days after Start of Construction |
| | Final DB Mod file delivered to PowerOps. | **Seller** | PowerOps | 10 Days prior to the scheduled Test Period |
| **Seller's Substation Commissioning** | Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled generation resource performance testing. | **Seller** | Buyer's Project Manager | Prior to the scheduled performance testing |
| **Metering** | All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary. | **Seller** | PowerOps | Prior to the scheduled performance testing |
| **CAISO Resource Registration** | Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration. | **Seller** | PowerOps | 180 Days prior to the scheduled Test Period |
| | A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. | **Seller** | PowerOps | 45 Days prior to transmission interconnection in-service date |
| | PNM EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps. | **PowerOps** | Seller | |
| | Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter. | **Seller** | PowerOps | No later than 30 Days prior to the scheduled Test Period |
| **Power Operations Engineering Requirements for Commissioning** (Attachment 1) | This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data. | **PowerOps** | Seller | SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period. |
| **Power Operations & WPM Systems configuration** | EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent generation resources for CAISO market participation. | **PowerOps & WPM IT Support** | Seller | Prior to the beginning of the scheduled Test Period |
| **Operating Procedure** | Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering. | **Seller** | PowerOps | 90 Days prior to the Commercial Operation Date |
| | An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system. | **Seller/Buyer** | Seller / PowerOps / Generation Engineering | 30 Days prior to the Commercial Operation Date |
| **OEM Test Plan** | The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide Buyer with a certificate from an officer certifying that the testing required under the supply agreement with OEM was satisfactorily conducted. | **Seller** | Generation Engineering | All; Seller's officer certification may be included in the certification required by clause (g) of Commercial Operation.. |
| **Test Energy Plan &** | Buyer Testing requirements defined in this document and Exhibit F – Commissioning and | **Seller** | Generation | Seller shall provide its planned energy schedule 30 |

| Requirement | Description | Responsible Party | Contributor(s) | Timeline for initial delivery |
|---|---|---|---|---|
| **Schedule** | Annual Tests of the associated PPA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans. | | Engineering | Days before the beginning of the scheduled Test Period. |
| **Commissioning Readiness Review Meeting** | Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in:<br>Attachment 2: Commissioning Readiness Review | **Generation Engineering** | Seller, PowerOps | 30 Days prior to the beginning of the scheduled Test Period |



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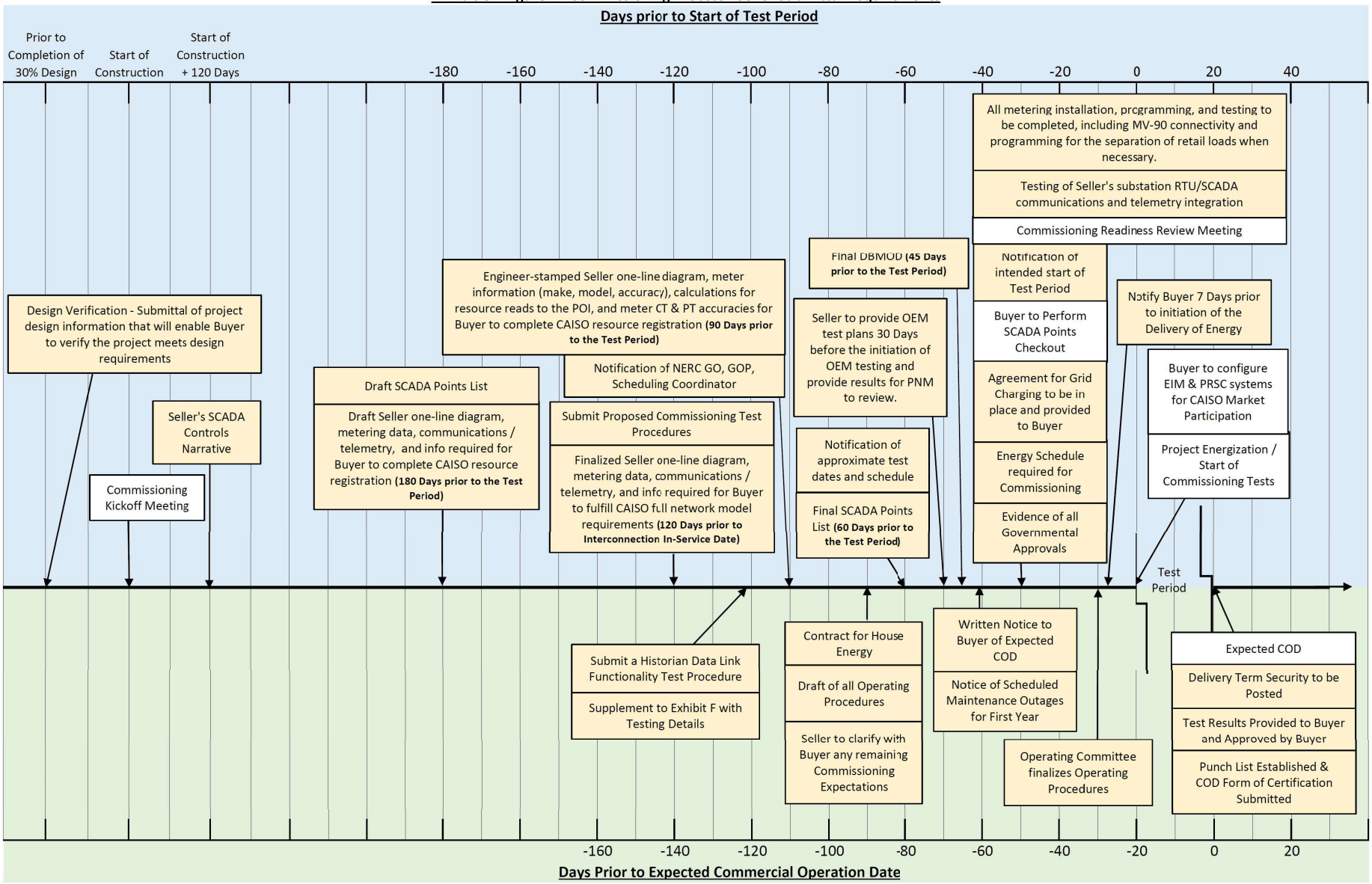
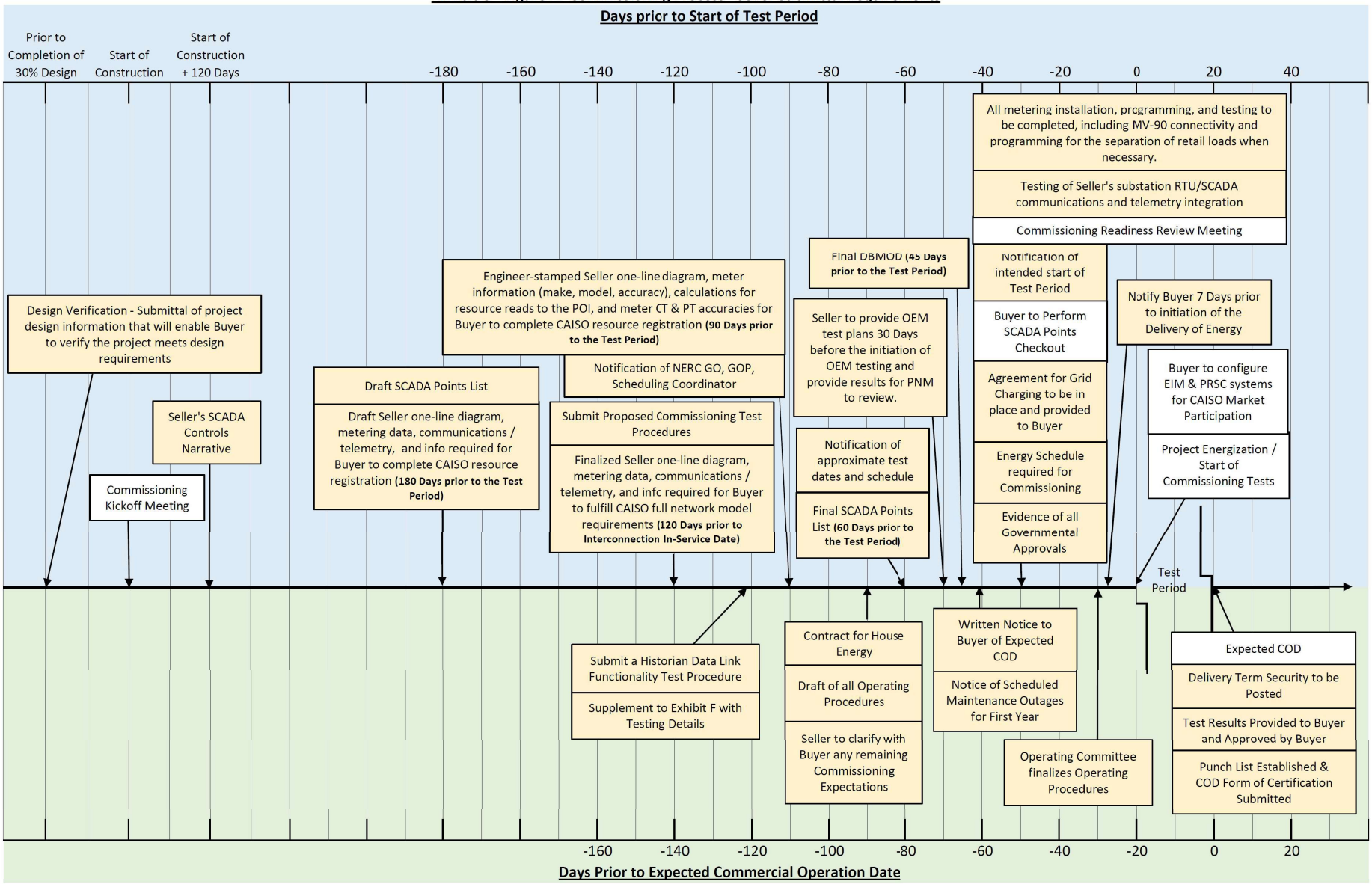
**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

Section 3.3 Commissioning.

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the PPA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.
- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Historian Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the PPA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

Section 3.4 **Final Requirements Prior to COD.**

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:

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- Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
- Buyer teams responsible for review and approval of testing results include:
  - SCADA / Telemetry – Power Operations
  - AGC & DERMS – Power Operations
  - Capabilities Tests – Generation Engineering
  - Performance Tests – Generation Engineering

- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

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## ATTACHMENT 1 TO EXHIBIT O

## BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer prior to the beginning of the Test Period:
    a. Nameplate values: MW, MWh, etc.
    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: Internet and metering based telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry associated with internet and metering communication paths must be independent of one another with no single point of failure.
    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 30 Days prior to the beginning of the scheduled Test Period.
    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.
    d. Telemetry for Seller's substation awareness shall include:
        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - Generation resource total gross values and total net values (in both MW and MVAr)
                - Gross and net values shall be provided for each resource registered with CAISO
            - Point of Delivery values – MW, MVAr
            - AGC setpoints for generation resource and voltage setpoint. As well as the feedback for those setpoints.
            - Total real power target
    e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

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3. DERMS Workbook inputs:
    a. Seller shall provide required information for the DERMS, including:
        - SCADA keys, resource characteristics, meteorology, etc.
        - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period

4. Testing for all AGC and voltage setpoints as defined in Exhibit F.

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## ATTACHMENT 2 TO EXHIBIT O

## COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. The expected result and how might the test evaluation results affect the program.
5. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
6. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and operational testers prior to any test using personnel.
7. The fallback plan should a technical issue or potential showstopper arise during testing.
    a. The test director that will decide if an issue is a showstopper.
8. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

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**EXHIBIT P**

**FORM OF LENDER CONSENT**

**CONSENT AND AGREEMENT**

This Consent and Agreement (this "***Consent***") is made and entered into as of ___ _, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

**RECITALS**

_____ ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of a photovoltaic solar electric energy generating facility owned by Seller and located in ____, [STATE] (the "***Solar Project***").

Seller and Buyer have entered into that certain Environmental Attributes Purchase Agreement, dated as of ____ (as amended, restated, supplemented or otherwise modified from time to time, the "***PPA***"), relating to the energy generated by the Solar Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the PPA (the "***Pledged PPA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

**AGREEMENTS**

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged PPA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged PPA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of solar energy facilities of comparable size to the Solar Project and the ability perform all aspects of the PPA; (d) has agreed in writing to be bound by the PPA and to assume all of Seller's obligations under the PPA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged PPA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of

and after the date of assignment, the Facility Development Security Amount or the Operational Security, as applicable, and (iii) Buyer has not terminated this PPA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged PPA (a "*Subsequent Seller*"), may be substituted for Seller under the PPA and Buyer shall recognize such Subsequent Seller as its counterparty under the PPA and, subject to all rights and remedies of Buyer under the PPA, continue to perform its obligations under the PPA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the PPA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the PPA. The transfer of the PPA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the PPA, Lender may cure such default by the deadline provided therefor in the PPA. Buyer will not terminate the PPA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the PPA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the PPA, (b) with respect to a default under Section 12.1(B)(8) or 22.21(A), (B), (C) or (E) of the Agreement, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the PPA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the PPA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the PPA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Solar Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. PPA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the PPA; provided that notwithstanding the foregoing, Buyer may terminate the PPA without Lender consent due to an uncured Event of Default under the PPA after the expiration of Lender's rights to cure under Section 4 hereof.

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the PPA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the PPA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA.

8. Replacement Agreement. If the PPA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the PPA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the PPA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the PPA (other than the bankruptcy of Seller or a transfer of the Solar Project to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 18.6 (Assignment to Lenders) of the PPA).

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining

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provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the PPA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the PPA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

**[BUYER]**

By: _____
Name: _____
Title: _____

**[LENDER]**

By _____
Its _____

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ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the PPA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the PPA, as and when required under the PPA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the PPA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the PPA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the PPA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the PPA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the PPA. Seller shall have no rights against Buyer, under the PPA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

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**EXHIBIT Q**

**Form of Estoppel Certificate**

**ESTOPPEL CERTIFICATE**

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Power Purchase Agreement, dated as of _____ (the "***PPA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a solar energy generating facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the PPA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the PPA have been duly authorized by all necessary action on the part of Buyer, (ii) the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the PPA, Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

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[BUYER]

By: _____
Name: _____
Title: _____

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**FORM OF THIRD PARTY ESA**

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING FINAL CREDIT AND LEGAL APPROVAL) AND ALL REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED, DELIVERED AND APPROVED BY ALL REQUIRED REGULATORY BODIES, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS.

# ENERGY STORAGE AGREEMENT— [●]

**by and between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**[●]**

**Dated as of [●]**

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# ENERGY STORAGE AGREEMENT

This Energy Storage Agreement, as may be amended from time to time, is entered into this [●] Day of [●], [●] ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and [●], a [●] ("**Seller**"), whose principal place of business is [●]. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a "**Party**" and collectively as the "Parties."

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission;

WHEREAS, Seller desires to develop, design, construct, own and operate an energy storage facility, as further defined herein and in Exhibit A; and

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (as amended from time to time, **Special Service Contract**"), between Buyer and Greater Kudu LLC. ("**Retail Customer**"), as amended from time to time, Buyer has agreed, by entering into this ESA, to procure the Product from the Project to serve Retail Customer's load; and

WHEREAS, Seller desires to sell and deliver to Buyer the Product (as defined herein) from the Project, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

## ARTICLE 1
## Definitions and Rules of Interpretation

1.1 Definitions. The following terms have the meanings set forth herein.

"**Abandonment**" means (a) prior to the Commercial Operation Date, a cessation of work and operations at or in respect of the Project for more than ninety (90) consecutive Days by Seller or Seller's contractors but only if such cessation is not in accordance with Prudent Utility Practices, caused by a Force Majeure Event, caused by Buyer Event of Default or is not in accordance with Seller's Project Schedule, or (b) after the Commercial Operation Date, the permanent relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this ESA.

"**AC**" means alternating electric current.

"**Accounting Standards**" has the meaning set forth in Section 22.18.

"**Actual Charge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual Discharge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual System Latency Delay**" has the meaning set forth in Exhibit F.

"**Additional Consents**" means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this ESA that are required from any Governmental Authority with respect to the Project.

"**Affiliate**" of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity, excluding any Tax Equity Investor. For purposes of this definition, the term "control" (including the terms "controls," "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise.

"**After Tax Basis**" means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment ("**Base Payment**") supplemented by a further payment ("**Additional Payment**") to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

"**AGC**" stands for "**Automatic Generation Control**" and means energy management system equipment that automatically adjusts the quantity of Charging Energy and Discharge Energy of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

"**Ancillary Services**" means operating reserves, frequency regulation, reactive supply, voltage control, frequency response, contingency reserves, and other products associated with the storage and delivery of Energy, each to the extent that the Project is capable of providing such services.

"**Anything of Value**" includes, but is not limited to, cash or a cash equivalent (including "grease," "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

"**Applicable Law**" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction over this ESA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"**Back-Up Metering**" has the meaning set forth in Section 5.3(A).

"**Balancing Area Authority**" or "**BAA**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

"**Business Day**" means any calendar Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

"**Buyer**" has the meaning set forth in the Preamble and acts herein in its merchant function capacity.

"**Buyer Commissioning Delays**" has the meaning set forth in Exhibit O.

"**Buyer Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Buyer in connection with the termination of this ESA, to the extent such costs are not already included in Replacement ESS Costs.

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value; provided that if (b)(i) is less than (b)(ii), then zero, plus (c) any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes that are currently available pursuant to this ESA as of the date of termination of this ESA, Seller acknowledging that Buyer entered into this ESA for the procurement of Energy Storage Services, which includes any Future Environmental Attributes; plus (d) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. The Buyer Termination Payment shall not include consequential, punitive, exemplary or indirect or business interruption damages.

"**CAISO**" means the California Independent System Operator Corporation and any successor entity.

"**CAISO Tariff**" means the CAISO Open Access Transmission Tariff that has been filed with an accepted by FERC, as may be amended from time to time.

"**Change of Control**" means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller.

"**Charging Energy**" means the amount of Energy supplied by Buyer or the Solar Facility on behalf of Buyer, as applicable, at Buyer's cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured in MWh by the Electric Metering Devices, accounting for estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Commercial Operation**" means when the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the ESS Reliability Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this ESA; and (h) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

"**Commercial Operation Date**" means the date on which all of the following have occurred (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10; (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation Notice**" has the meaning set forth in Section 3.10.

"**Commercial Operation Year**" means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on

the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

"**Commissioning Performance Test**" means the Initial ESS Unit Capabilities testing detailed in Exhibit F required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

"**Commissioning Readiness Review Meeting**" has the meaning set forth in Exhibit O.

"**Commissioning Tests**" has the meaning set forth in Section 10.2 as further defined in Exhibit F.

"**Commissioning Kickoff Meeting**" has the meaning set forth in Section 3.1 of Exhibit O.

"**Confidential Information**" has the meaning set forth in Section 22.14(C).

"**Contract Value**" means the sum of the present values of the ESS Payments for each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination), which annual amount is equal to (a) the quantity of ESS Capacity expected to be made available during such Commercial Operation Year (or portion thereof) times (b) the ESS Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Creditworthy**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Customer Event of Default**" has the meaning set forth in the Special Service Contract.

"**Data Breach**" has the meaning set forth in Section 22.14(F).

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

"**Default Rate**" has the meaning set forth in Section 9.4.

"**Defaulting Party**" means the Party with respect to which an Event of Default under Article 12 has occurred.

"**Delay Damages**" has the meaning set forth in Section 3.7.

"**Delayed ESS Capacity**" has the meaning set forth in Section 3.7.

"**Delivery Term**" has the meaning set forth in Section 7.1.

"**Delivery Term Security**" has the meaning set forth in Section 19.1.

"**Development Security**" has the meaning set forth in Section 19.1.

"**Discharge Energy**" means Energy discharged from the ESS and delivered to Buyer at the Point of Delivery, as measured in MWh by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties.

"**Disclosing Party**" has the meaning set forth in Section 22.14(A).

"**Dispute Notice**" has the meaning set forth in Section 13.8.

"**Disputing Party**" has the meaning set forth in Section 9.5(A).

"**Dollars**" means the lawful currency of the United States of America.

"**Downgrade Event**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is not as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Early Termination Date**" has the meaning set forth in Section 12.4.

"**Electric Interconnection Point**" means the Point of Delivery.

"**Electric Metering Device(s)**" means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharge Energy. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering including the metering current transformers and the metering voltage transformers.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project, as measured by Electric Metering Devices, net of auxiliary loads, station electrical uses and appropriate line losses.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer's dispatch instructions and subject to the terms and conditions of this ESA.

"**Energy Storage System**" or "**ESS**" means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's charging, discharging, delivery or storage of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include (A) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States Environmental Protection Agency or other governmental agencies, (B) any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act, (C) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, (D) credits, benefits or allowances resulting from the compliance of the Project or Project Energy with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes include all RECs, any and all aspects of a REC, and the exclusive right to claim the additionality, or "but for cause", of such Projects' development and commercial operation, (E) all WREGIS Certificates as defined by the WREGIS Operating Rules and (F) those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project's delivery or storage of electricity. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; (iii) any Energy, reliability or other power attributes from the Project, (iv) matters designated by Buyer as sources of liability, and (v) any adverse wildlife or environmental impacts.

"**Environmental Contamination**" means the introduction or presence of Hazardous

Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

"**Equivalent Full Cycle**" means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total ESS Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

"**ESA**" means this Energy Storage Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"**ESS Capacity**" means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for four (4) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically by the ESS Capacity Test in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Capacity Shortfall Damages**" has the meaning set forth in Section 3.8.

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Non-Performance Liquidated Damages**" has the meaning set forth in Section 3.13.

"**ESS Operating Restrictions**" means the operating restrictions of the ESS set forth in Exhibit L.

"**ESS Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Payment Rate**" means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

"**ESS Response Shortfall**" has the meaning set forth in Exhibit F.

"**ESS Response Shortfall Damages**" has the meaning set forth in Section 3.13(B).

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the ESS Electric Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Unit Capabilities**" has the meaning set forth in Section 3.12.

"**Event of Default**" means a Seller Event of Default as set forth in Section 12.1 or a Buyer Event of Default as set forth in Section 12.2.

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"**Excused Delay**" means a Force Majeure or Interconnection Delay, to the extent in each case (i) not caused by an act or omission of Seller, (ii) occurring despite Seller's exercise of Prudent Utility Practices, (iii) not reasonably foreseeable, and (iv) beyond the reasonable control of, and not caused by the negligence or lack of due diligence of, Seller or its contractors or suppliers.

"**Execution Date**" has the meaning set forth in the Preamble.

"**Expected Commercial Operation Date**" has the meaning set forth in Section 3.1.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**Fitch**" means Fitch Ratings Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

"**Force Majeure Event**" has the meaning set forth in Section 14.1.

"**Frequency Response Capability**" means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on the Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date.

"**GAAP**" has the meaning set forth in Section 22.18.

"**Government Official**" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

"**Governmental Approval**" means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this ESA or the procurement pursuant to this ESA of Product or any component thereof, and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition,

direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

"**Governmental Authority**" means any applicable federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"**Governmental Charges**" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product, either directly or indirectly.

"**Gross Receipts Taxes**" means any New Mexico state and local sales taxes, gross receipts taxes and similar taxes and charges.

"**Grid Charging Energy**" means Charging Energy supplied from the grid and delivered to the Point of Delivery by Buyer.

"**Guaranteed Charge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed Discharge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed ESS Capacity**" has the meaning set forth in Section 3.12, as may be adjusted pursuant to Section 3.8, and shall be valid for the full duration of the ESA with no allowance for degradation.

"**Guaranteed ESS Roundtrip Efficiency**" has the meaning set forth in Section 3.12.

"**Guaranteed PMAX**" has the meaning set forth in Section 3.12.

"**Guaranteed Start Date**" has the meaning set forth in Section 3.1.

"**Guaranteed System Latency**" means the guaranteed time measured between when the control signal is received and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as specified in Section 3.12.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a "hazardous substance"

pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" means energy consumed by ESS ancillaries not directly involved in the control, receipt, storage, or discharge of energy during charging or discharging.

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended, amended and restated, modified, replaced or otherwise supplemented from time to time.

**"Interconnection Delay"** means the Transmission Provider's delay of the In-Service Date (as may be extended from time-to-time pursuant to and as defined in the Interconnection Agreement, or an analogous date, to the extent the Interconnection Agreement is amended or replaced) beyond the schedule set forth in the Interconnection Agreement (including delay in setting the In-Service Date, other than due to the failure of the Interconnection Agreement to come out of suspension) in completing construction of the Interconnection Facilities or upgrades to the Transmission Provider's Transmission System related to, and required pursuant to the Interconnection Agreement for the interconnection of the Project, but only to the extent that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, including Seller's failure to complete its obligations under the Interconnection Agreement as needed to ensure timely completion and operation of such Interconnection Facilities.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities as defined and set forth in the Interconnection Agreement (or an analogous term, to the extent the Interconnection Agreement is amended or replaced).

"**Issuer Minimum Requirements**" has the meaning set forth in Section 19.2.

"**ITC(s)**" means the investment tax credits established pursuant to Section 48 or Section 48E of the Internal Revenue Code, as such law may be amended or superseded.

"**kW**" means one or more kilowatts AC of electricity, as the context requires.

"**kWh**" means kilowatt hour AC.

"**Lender(s)**" means any and all Persons other than an Affiliate of Seller (a) lending money or extending credit (including any financing lease, monetization of tax benefits, construction, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or its Affiliates: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing (including tax equity bridge financing), credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) for any capital

improvement or replacement related to the Project; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

"**Letter of Credit**" means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

"**Licensed Professional Engineer**" means an independent, professional engineer that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, (4) Clean Energy Associates, or (5) Leidos Engineering, LLC; and (B) reasonably acceptable to Buyer (provided that at least one of the foregoing (A)(1)-(5) shall be reasonably acceptable to Buyer), licensed in the State of New Mexico and otherwise qualified to perform the work and provide the certifications required hereunder.

"**Local Provider**" has the meaning set forth in Section 1.4.

"**Losses**" has the meaning set forth in Section 20.1(A).

"**Market Event**" has the meaning set forth in Section 22.22.

"**Market Operator**" means (a) CAISO in its capacity as operator of EIM, (b) the operator of the BAA or any other entity performing the market operator function for the BAA, or (c) any organized day-ahead or intra-hour market for a region that includes the Transmission Provider's Transmission System.

"**Maximum State of Charge**" means the relative SOC above which the battery manufacturer recommends that the BESS system not be charged, expressed in percent of Nameplate Energy Capacity.

"**Minimum State of Charge**" means the relative SOC below which the battery manufacturer recommends that the BESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

"**Month**" means a calendar month.

"**Monthly Billing Period**" means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.8.

"**Moody's**" means Moody's Investor Services, Inc. and any successor thereto.

"**Mountain Standard Time**" or "**MST**" means the time that is seven (7) hours behind Coordinated Universal Time (UTC).

**"MPT Failure"** means any failure in the Project's main power transformer or high voltage breakers (a) requiring (x) at least a thirty (30) day outage and (y) any of (i) replacement of the main power transformer or high voltage breakers, (ii) shipment of the main power transformer or major

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component thereof, or high voltage breakers or major component thereof, to the manufacturer for repair, or (iii) the on-site repair of the main power transformer or major component thereof, or high voltage breakers or major component thereof, and (b) that is not caused directly or indirectly by Seller's failure to comply with Prudent Utility Practices (including failure to maintain adequate spare parts for replaceable equipment connected to the main power transformer or high voltage breakers) or Applicable Law or otherwise by the dalliance, delay, fault or negligence of or by Seller.

"**Munitions List**" means any list of articles, services or technology designated as defense or military articles, technologies, software or services by any relevant Government Authority, including items listed on the United States Munitions List and/or the Common Military List of the European Union.

"**MW**" means megawatt or one thousand (1,000) kW AC.

"**MWh**" means megawatt hours AC.

**"Nameplate Energy Capacity"** is the maximum amount of energy in MWh, less auxiliary loads, that the BESS can store at 100% state of charge.

"**NERC**" means the North American Electric Reliability Corporation or any successor organization.

"**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in Section 17.3(B).

"**Non-Defaulting Party**" means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

"**Non-Governmental Compliance Obligations**" means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, and self-regulatory organizations to which the Party is required to have membership and/or submit to jurisdiction in the performance of this ESA.

"**O&M Records**" has the meaning set forth in Section 13.4(A).

"**OATT**" means the Open Access Transmission Tariff.

"**Operating Parameters**" has the meaning set forth in Section 10.4(A).

"**Operating Procedures**" means those procedures developed pursuant to Section 10.5.

"**Operating Records**" means all operating logs, blueprints for construction, operating manuals, all warranties on equipment, material engineering drawings, environmental permits, plans, and all documents, including but not limited to supply contracts, studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or

maintains for the operation of the Project. Seller may redact from Operating Records information that Seller reasonably deems commercially sensitive, so long as such redaction does not result in a non-performance by Seller of any of its obligations under this ESA, including audits under Section 22.18 or required to verify Seller's compliance with this ESA and its representations and warranties in Section 15.1, Guaranteed ESS Capacity, and billing and payments.

"**Outage Notice**" has the meaning set forth in Section 7.5(A).

"**Party**" or "**Parties**" has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

"**Person**" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**PNM Event of Default**" has the meaning set forth in the Special Service Contract.

"**Point of Contact List**" or "**POC List**" has the meaning set forth in Section 2 of Exhibit O.

"**Point of Delivery**" means the electric system point at which (a) Buyer delivers Charging Energy to Seller if Buyer elects to deliver Grid Charging Energy, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA. Energy delivered from the Project to the Energy Storage System shall be adjusted for losses as of Delivery and shall be deemed to have been delivered at the Point of Delivery.

"**PPA**" or "**Power Purchase Agreement**" means that certain Power Purchase Agreement, dated as of ___, by and between [PPA Seller] and Buyer relating to the Solar Facility, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

"**Primary Metering Device(s)**" means the metering and data processing equipment used as the primary basis to measure, record, or transmit data relating to the Charging Energy or Discharge Energy associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

"**Product**" means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, from the Project, all of which shall be made available and delivered for Buyer's exclusive use pursuant to the terms of this ESA.

"**Project**" means Seller's energy storage facility, located on the Site, with a designed maximum power discharge capability of [_____] megawatts [(XX) MW] for [_____] [(X)] hours (xxxx MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller's equipment,

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buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

"**Project Manager**" has the meaning set forth in Section 10.1(D).

"**Project Schedule**" has the meaning set forth in Section 3.2.

"**Promotional Materials**" has the meaning set forth in Section 22.15.

"**Prudent Utility Practice(s)**" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available when needed and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for ESS of the technology provided in the region and will function properly over the

full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

"**PTs**" has the meaning set forth in Section 5.3(A).

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) a current long-term credit rating (corporate or long-term senior unsecured debt) of (A) "A2" or higher by Moody's and "A" or higher by S&P, if such Person is rated by both Moody's and S&P, or (B) "A2" or higher by Moody's, or "A" or higher by S&P if such Person is rated by either S&P or Moody's, or (C) equivalent ratings by any other credit rating agency of recognized national standing, and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility), or (b) is reasonably acceptable to Buyer..

"**Rating Agency**" shall mean S&P, Moody's or Fitch.

"**Receiving Party**" has the meaning set forth in Section 22.14(A).

"**Receiving Party's Representatives**" has the meaning set forth in Section 22.14(B).

"**Recording**" has the meaning set forth in Section 22.19.

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator, as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Renewable Energy Certificate**" or "**REC**" means a WREGIS Certificate as defined by the WREGIS Operating Rules and all Environmental Attributes associated with the generated energy. If and when applicable, any RECs delivered by Seller must be compliant with the requirements of the New Mexico Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended.

"**Replacement ESS Costs**" means the actual costs incurred by Buyer following an Event of Default that are reasonable and necessary to replace the Product (based upon similar terms, conditions and performance standards outline in this ESA) which Seller, in accordance with this

ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable Product delivered to Buyer's system, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this ESA.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**Retail Customer**" has the meaning set forth in the Recitals.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community or, His Majesty's Treasury or any, and each other sanctions authority which has jurisdiction in respect of any Party or the Project.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"**Scheduled Maintenance Outage**" means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this ESA, or as otherwise agreed by Seller and Buyer.

**"Scope Reporting Rule"** means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 Code of Federal Regulations § 229.1500, et seq., as amended from time to time, and, to the extent Buyer or Retail Customer voluntarily elects in its sole discretion to comply therewith, as proposed, or, following the effectiveness thereof, in the final rule form thereof despite being stayed or vacated by appealable judicial action and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Subscriber voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

"**SEC**" has the meaning set forth in Section 22.18.

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Security**" means Development Security or Delivery Term Security, as applicable.

"**Seller**" has the meaning set forth in the Preamble.

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product to Buyer as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, (c) dispatch of the Project by Buyer that is not in accordance with the Operating Parameters (other than due to a breach by Seller of its obligations under this ESA), (d) failure of Buyer to have provided sufficient Charging Energy for such discharge, or (e) any failure by Buyer to deliver Charging Energy or receive Discharge Energy at the Point of Delivery.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery, in an amount of at least five (5) MWs and not associated with Seller Excused Hours.

"**Seller Guarantor**" means an entity that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Parties**" means: (a) Seller's Affiliates; (b) owners, directors, officers and employees of Seller or Seller Affiliates; and (c) representatives, agents, and subcontractors of Seller and/or Seller Affiliates, in each case, providing services on behalf of, or engaged by, Seller or Seller Affiliates in connection with this Agreement and any activity contemplated hereunder or thereunder (and a "Seller Party" is any one of the foregoing).

"**Seller Permitted Transfer**" means any of the following: (a) a Change of Control of Seller's Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor in connection with a Tax Equity Financing; or (c) a transfer of all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction; *provided*, that in the case of each of (b) or (c), following such transfer (A) the entity that operates the Project is (or contracts with) a Qualified Operator, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics, and Seller, or such Person, maintains the applicable Seller Security requirements in accordance with Article 19.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Product) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; provided that if (a)(i) is less than (a)(ii), then zero, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption

damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or in entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this ESA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this ESA.

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. This ESA is Site specific and any relocation of the physical location of the proposed Point of Delivery with respect to the Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. Adding or subtracting contiguous parcels of property or modifying the layout of the batteries within the Site will not be deemed a relocation requiring Buyer consent.

"**Solar Charging Energy**" means Charging Energy generated by the Solar Facility and delivered to the Solar Charging Point by the Solar Facility on behalf of Buyer.

**"Solar Charging Point"** means the electric system points specified on Exhibit B at which Seller delivers Solar Energy Output (as defined in the PPA) to the Energy Storage System for purposes of charging the ESS under the terms of this ESA.

"**Solar Facility**" means the co-located 100 $MW_{AC}$ Four Mile Mesa solar generating plant consisting of photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary to collect sunlight and convert it into electricity which, among other things, will be used to charge the ESS per Buyer's dispatch elections.

"**Special Service Contract**" has the meaning set forth in the Recitals.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch generating units, including the ESS.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits, and any other tax credits which are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, (i) with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project or (ii) any transaction or series of transactions pursuant to which Seller or an upstream equity owner of Seller sells the tax credits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

"**Term**" means the period during which this ESA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Energy**" means any and all Discharge Energy discharged by the Project and delivered to Buyer during the Test Period.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

"**Transmission Provider**" means Public Service Company of New Mexico, Inc., a New Mexico corporation, acting in its transmission function capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means _____.

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

"**WREGIS Qualified Reporting Entity**" as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS Certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules and WREGIS Terms of Use.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this ESA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this ESA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this ESA, the terms of this ESA shall take precedence.

(D) This ESA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this ESA, and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this ESA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this ESA. Unless expressly provided otherwise in this ESA, (i) where the ESA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the ESA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this Agreement as a whole.

(H) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(I) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or".

(J) Headings and Section titles are solely for convenience and should not be used to aid in the construction of this Agreement.

(K) All uses of the word "shall" in this ESA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party shall conduct its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions and therefore:

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this ESA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this ESA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of House Energy or station service power from the auxiliary step-down transformer. Seller shall secure a contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy and station service power from the auxiliary step-down transformer must be separate or bi-directional or able to be financially separated from the metering (*e.g.*, SCADA-generated loss assumptions) of Charging and Discharging of the ESS in a manner that complies with WREGIS Operating

Rules, as applicable, and is otherwise compliant with industry standards.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this ESA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Solar Facility for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such additional facilities shall not be delivered by Seller to Buyer under this ESA. House Energy and station service power shall be real time measured by a dedicated Electric Metering Device to the extent commercially reasonable, or separately based on metering logic or SCADA points, and shall not be delivered by Seller to Buyer under this ESA, and station service power shall be measured from its auxiliary stepdown transformer.

## ARTICLE 2
## Term and Termination

2.1 Execution Date and Term. This ESA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the [_____] ([__]) Commercial Operation Year ("**Term**"), subject to the early termination provisions set forth herein. Applicable provisions of this ESA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

## ARTICLE 3
## Project Description

3.1 Commercial Terms. The following commercial terms, and as more fully set forth in this ESA, apply to the transaction contemplated by this ESA:

**COMMERCIAL TERMS**

| | |
|---|---|
| **Buyer:** Public Service Company of New Mexico | **Seller:** [●] |
| **Project:** [●] | |
| **Point of Delivery:** The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of "Point of Delivery." | |
| **Contract Term:** [●] ([●]) | **Product Type:** Bundled Discharge Energy, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services |
| **ESS Payment Rate:** $[●] per MWh | |
| | |
| **Day(s) of week:** Monday through Sunday, including NERC holidays | **Hours:** Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time ("**MST**") |
| **Guaranteed Start Date:** One Hundred Eighty (180) Days after the Expected Commercial Operation Date | |
| **Expected Commercial Operation Date:** [●] | |

3.2 Project. Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this ESA. Exhibit A also contains a preliminary indication of the location of the ESS and Solar Facility at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS, Interconnection Facilities, and Solar Facility at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the Interconnection Agreement, and the terms of this ESA. The Project shall meet or exceed the recommended performance specifications of this Sections 3.4.A through 3.4.H, and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through 4.9 at the Point of Delivery, at all times:

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(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N – Example Interconnection Metering Diagram from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Discharge Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) be capable of receiving Grid Charging Energy and Solar Charging Energy delivered from the Solar Facility and delivering Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of operation over an ambient temperature range of -10°F to 110°F with the full range of relative humidity;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of disconnection remotely by the System Control Center;

(I) meet or exceed the recommended performance specifications of Sections 3.4.I through 3.4.L, and as appropriately defined in IEEE Standard 2800-2022 Sections 5, Section 6 and Section 7 at the Point of Delivery, Seller and Buyer acknowledge that in some instances simultaneous conflicting parameters cannot be followed at all times;

(J) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Section 5 at the Point of Delivery;

(K) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Sections 7 at the Point of Delivery, which shall be Category II minimum;

(L) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery; and

(M) no later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's

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SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Sections 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. As reasonably required prior to Commercial Operation, Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this ESA, the Commercial Operation Date shall occur no later than the Guaranteed Start Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date related damages provisions under Section 3.7 shall be extended(a) up to a maximum of one hundred eighty (180) Days or longer period agreed to by the Parties, equal to the duration of any Excused Delay that delays construction or commencement of operation of the Project, on a day-for-day basis (b) up to a maximum of one hundred eighty (180) days, or longer period agreed to by the Parties in the event of delay associated with the timely completion and operation of the Interconnection Facilities necessary for the interconnection of the Project (and in any event allowing for back-feed to the Project by no later than March 15, 2027), provided that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, on a day-for-day basis, (c) on a day-for-day basis up to a maximum of one hundred eighty (180) Days for each Day that NMPRC Approval has not been received after the occurrence of the Regulatory End Date, and (d) on a day-for-day basis for any Buyer Commissioning Delays. Seller shall give written notice to Buyer describing any such delay in accordance with Section 14.2 after becoming aware of any extension of Expected Commercial Operation Date. The number of Days of such extension shall be calculated from the date on which the event begins. If cumulative extensions under (a) or (b) above will delay the Commercial Operation Date beyond the Guaranteed Start Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this ESA without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the

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Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed ESS Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed ESS Capacity**" means the Guaranteed ESS Capacity minus the ESS Capacity as of the determination date.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars ($350,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8, and further the Delivery Term Security will be adjusted on a pro rata basis corresponding to the reduction in the Guaranteed ESS Capacity.

3.9 Test Period. Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generation Operator and will designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M, forty-five (45) Days prior to the beginning of the Test Period. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. During the Test Period, Seller agrees to accept and purchase all Test Energy (net of losses due to ESS Roundtrip Efficiency) generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty (50%) percent of the ESS Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of such Test Period. Scheduling for subsequent deliveries of Discharge Energy shall be as set forth in section 5.1.

3.10 Notice of Commercial Operation. Not less than thirty (30) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such anticipated Commercial Operation Date; provided that such anticipated Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied (the "Commercial Operation Notice"). Buyer shall in writing either accept or reject Seller's Commercial Operation Notice within fifteen (15) Business Days after the date of such Commercial Operation Notice, in its reasonable discretion, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has

fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Charging. Seller shall construct the ESS to accept Charging Energy as both Grid Charging Energy and Solar Charging Energy and make commercially reasonable efforts to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from both the electrical grid and Solar Facility by the Commercial Operation Date. Buyer agrees that it shall, at Seller's reasonable request, deliver Grid Charging Energy to the ESS to enable Seller to perform the commissioning tests for the ESS pursuant to Section 10.2 and as otherwise may be necessary for Seller to achieve Commercial Operation.

3.12 ESS Unit Capabilities. "ESS Unit Capabilities" means all of the following for the ESS, all as measured and determined at the Point of Delivery:

(A) **Guaranteed PMAX**" shall be [__]MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) **Guaranteed ESS Capacity**: discharge ESS at Guaranteed PMAX for four (4) consecutive hours; starting at the Maximum State of Charge and ending at the Minimum State of Charge;

(C) **Guaranteed ESS Roundtrip Efficiency** as shown in Exhibit K; Seller shall provide any applicable degradation forecasts applicable to this guarantee;

(D) **Guaranteed Discharge Ramp Rate** of Guaranteed PMAX per second measured between 100% state of charge and 0% state of charge representing the maximum rate that the ESS can change its output power;

(E) **Guaranteed Charge Ramp Rate** of Guaranteed PMAX per second measured between 0% state of charge to 100% state of charge representing the maximum rate that the ESS can change its input power;

(F) **Guaranteed System Latency:** four (4) seconds;

(G) **Guaranteed Frequency Response Capability** of Guaranteed PMAX/0.1Hz; and

(H) **Capability to support Ancillary Services** in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Seller will pay Buyer the following liquidated damages ("**ESS Non-Performance Liquidated Damages**") as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, or (b) failure of Buyer to deliver Charging Energy) or to comply with the requirements of Section 7.4(a).

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Forty Thousand Dollars ($140,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured; and

(B) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, Guaranteed Frequency Response Capability, or Guaranteed System Latency during ESS Unit Capabilities Testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. Provided, however, under no circumstances will ESS Non-Performance Liquidated Damages (other than ESS Response Shortfall Damages) exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year and an aggregate of Two Million Dollars ($2,000,000) over the Term of this ESA.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay ESS Availability Damages, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

3.15 Guaranteed ESS Roundtrip Efficiency Payment. If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to $100/MWh * Guaranteed PMAX * 4 hours * (1 – (ESS Roundtrip Efficiency/Guaranteed ESS Roundtrip Efficiency)).

3.16 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this ESA is not prohibited by Applicable Law. Any breach of this Section 3.16 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.16 by Seller, its contractors or subcontractors or any of their respective Affiliates

AGC

4.1 AGC.

(A) Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery

Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this ESA. Seller shall construct or secure use of facilities necessary (i) to deliver the Discharge Energy to the Point of Delivery, (ii) to receive Solar Charging Energy from the Solar Facility at the Solar Charging Point, and (iii) in the event Buyer elects to utilize Grid Charging Energy pursuant to Section 3.11, to receive Grid Charging Energy at the Point of Delivery to the ESS. Delivery of Energy from the Solar Facility to the Transmission Provider's Transmission System shall take priority over Discharge Energy; provided, however, when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Discharge Energy shall take priority over delivery of Energy from the Solar Facility.

(B) Seller shall be responsible for the costs required to receive and deliver Energy at the Point of Delivery for the Project at the required voltage, limited to the costs of any associated network upgrades and "Transmission Provider Interconnection Facilities" (as defined in the Interconnection Agreement). As between Buyer and Seller under this ESA, Seller shall also be responsible for all electrical losses applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) If applicable and required by Buyer, Seller shall retain Public Service Company of New Mexico as its WREGIS Qualified Reporting Entity to report to WREGIS under the WREGIS Operating Rules.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) to deliver Charging Energy to the Point of Delivery including during the Test Period.

(E) Seller shall provide to Buyer a finalized one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete

resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to provide this information to Buyer in a timely manner.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers ("**CTs**") and potential transformers ("**PTs**") ("**Back-Up Metering**"), each in an arrangement consistent with the applicable configuration depicted in Exhibit N, or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement conflicts with these provisions, in which case the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this ESA. The design of the Electric Metering Device system shall be subject to Buyer timely review and approval, not to be unreasonably withheld. Buyer will, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe following such test. ESS Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous, five minute, fifteen minute, and hourly real and reactive Energy and capacity, if supplied by either the grid, the Solar Facility, or the Project. ESS Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.2 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party shall,

at its own expense, inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Secondary Metering, fails to register, or if the measurement made by an Electric Metering Device, or Secondary Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, followed by Secondary Metering to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

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(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

## ARTICLE 6
## Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this ESA are subject to satisfaction of the following conditions precedent:

(A) As provided in Section 17.3, receipt of NMPRC Approval; and

(B) Receipt of approval of the Boards of Directors of Buyer and its parent company.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

## ARTICLE 7
## Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell, make available and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available and delivered by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Party's performance is excused by a Force Majeure Event; (b) a Seller Forced Outage is continuing; (c) a Seller Scheduled Maintenance Outage is continuing. Title related to any Environmental Attributes and Future Environmental Attributes shall transfer from Seller to Buyer upon generating of the Energy from the Project.

7.2 Title and Risk of Loss. [PPA Seller] shall be deemed to be in control of all Solar Charging Energy up to the Solar Charging Point or Point of Delivery (as applicable), Buyer shall be deemed to be in control of all Grid Charging Energy up to delivery, but not including, receipt, at the Point of Delivery. Seller shall be in control of such Charging Energy from and after such delivery by [PPA Seller] to the Solar Charging Point or by Buyer to the Point of Delivery, as applicable, until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy up to the Point of Delivery. Buyer shall be in control of such Discharge Energy from and after Seller's delivery and upon Buyer's receipt at the Point of Delivery. Notwithstanding

anything set forth herein to the contrary, Buyer shall retain title and risk of loss for all Charging Energy stored in the ESS, Energy stored in the ESS, and Discharge Energy at all times. Title related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such Future Environmental Attributes is included in the ESS Payment Rate; and (c) such Future Environmental Attributes pass to Buyer. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines. Buyer is not required to provide this Project as a participating resource in a regional market, including the EIM or EDAM. However, should Buyer submit the Project for participation in any regional market, including the EIM or EDAM, the Parties agree that Buyer shall be solely responsible for any costs associated with the Project's participation in any regional market, including but not limited to costs associated with upgrades to the Project's RTU hardware, software, communication connection upgrades or any other upgrades necessary for the Project to participate in the regional market. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Discharge Energy and Charging Energy in accordance with NERC/WECC operating polices and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) [RESERVED]

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

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(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly ESS availability for the next six (6) Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Seller Forced Outages.

(A) Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Seller shall keep Buyer informed of any material developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

## ARTICLE 8
## Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Payment. Subject to Section 14.4 and Section 2.1(C) of Exhibit H, Buyer shall pay Seller an amount equal to the product of (i) ESS Capacity, not to exceed the Guaranteed ESS Capacity, *multiplied by* (ii) the ESS Payment Rate, *multiplied by* (iii) the ESS Available Hours (the "**ESS Payment**"). The ESS Payment also compensates Seller for the associated Future Environmental Attributes and Ancillary Services delivered to Buyer. The ESS Payment includes all Taxes except as provided for in Section 9.7, Section 20.1(B) and Section 21.1.

Example: For a 30-day month, assuming 98% availability:

*ESS Payment = 100 MW x 30 days x 24 hours x $21.25/MWh x .98*

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this ESA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 9
## Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period. Each such invoice shall show the ESS Payment, information and calculations, in reasonable detail.

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to Clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this ESA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or

Buyer under this ESA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this ESA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the "prime" rate as published in The Wall Street Journal on the first Business Day of each Month plus one-half percent (0.5%) ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) All Discharge Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Discharge Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this ESA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Gross Receipts Tax is applicable to the sale or delivery of Product hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the

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Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Product delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Product and on Buyer's payment and Seller's receipt of amounts due under this ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this ESA.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this ESA and implement the provisions in this ESA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, copies of any documentation respecting this ESA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this ESA, including Section 9.9 below, all payments between the Parties under this ESA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

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(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this ESA, including damages and other payments that are owed by a Party to the other Party pursuant to this ESA. Undisputed and non-offset portions of amounts invoiced under this ESA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this ESA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this ESA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 10
## Operations and Maintenance

10.1 Construction of the Project.

(A) Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a 1 Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-23-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by NMSA Section 62-13-16. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete

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one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer after consultation with Retail Customer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date), a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this ESA and any documents ancillary hereto, neither this ESA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith, including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-

commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this Agreement with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Such Commissioning Test procedures shall meet or exceed the operability performance requirements defined in IEEE Standard 2800-2022 Sections 4. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least thirty (30) Days' prior notice of the approximate test date and three (3) Days' prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days' advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this ESA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this ESA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

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10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA; and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five minute and real time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Discharge Energy delivered by Seller will meet operability performance requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all reasonably required real time measurement parameters of the Project made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Sections 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers requirements and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's substation major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day's written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than ninety (90) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "Operating Procedures"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized

representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must operate, maintain and control the Project at all times consistent with the Operating Procedures, the ESA, Prudent Utility Practices, Applicable Laws, the Shared Facilities Agreement, Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Seller agrees that Buyer may take necessary action to directly disconnect the Project under reliability or emergency conditions.

(A) Seller will prepare detailed test protocols and procedures for all of the Commissioning Tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be unreasonably denied or delayed.

(B) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and provide the results to Buyer. Seller will have sixty (60) Days from the test date to cure any deficiencies in the performance of the test.

(C) In the event of a material adverse change in ESS Unit Capabilities, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the following conditions. Buyer-Requested Performance Tests will be conducted in a manner consistent with the annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F.

(1) If the results of a Buyer-Requested Performance Test fail to meet the Guaranteed ESS Unit Capabilities, ESS Non-Performance Liquidated Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(2) Only two (2) Buyer-Requested Performance Tests may be requested per Commercial Operation Year.

(3) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

(D) In addition to the foregoing, Seller may, at its option and expense, perform additional tests ("**Seller-Requested Performance Tests**") in accordance with test protocols and

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procedures set forth in Exhibit F.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following Commercial Operation Year. Should Buyer desire to change the reporting dates noted above, the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each Scheduled Maintenance Outage for the Commercial Operation Year will be subject to reasonable approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon

by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

ARTICLE 11
Future Environmental Attributes

11.1 Sale of Environmental Attributes. Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer within than fifteen (15) Business Days after the Future Environmental Attributes are available to be transferred in the respective attribute tracking system. Buyer may request that Seller provide Buyer with a reasonable estimate of the incremental costs, if any, that Seller would incur to deliver to Buyer Future Environmental Attributes pursuant to WREGIS or another tracking system or registry, as requested by Buyer. Seller shall provide such reasonable cost estimate to Buyer within thirty (30) days of receipt of Buyer's request. Following Buyer's receipt of Seller's cost estimate, Buyer may thereafter require Seller deliver such Future Environmental Attributes, and Seller shall do so, at Buyer's expense; provided, however, that Buyer may further thereafter request Seller to cease delivery of some or all of such Future Environmental Attributes, and after the effective date of such request, Seller shall cease delivering as requested by Buyer.

(A) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the Environmental Attributes to Buyer or its respective designee(s).

(B) Ownership by Buyer of Environmental Attributes shall include any Future Environmental Attributes that are reserved or "banked" throughout the Term of this ESA, but not used, sold, assigned or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law. Buyer shall have the exclusive right to transfer Environmental Attributes to Retail Customer, or retain the Environmental Attributes and retire the Future Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(C) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(D) Seller shall not report in any public communication, or under any program, that any of the Future Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer or Retail Customer. Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Future Environmental Attributes for Buyer to own, hold and manage in Buyer's or Retail Customer's own name and account, including any rights associated with any

renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Future Environmental Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Future Environmental Attributes, RECs, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy, and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. To the extent that any such public communication is allowed under Section 13.1, in any public communication concerning the Project, Project Energy or the Future Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Future Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Project Energy.

## ARTICLE 12
## Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller enters into an assignment for the benefit of creditors;

(3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller's voluntarily taking advantage of any such law by answer or otherwise;

(4) The sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this ESA, or other date mutually agreed to by the Parties in writing;

(7) Seller's assignment of this ESA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) Seller's failure to make any payment required, unless remedied within thirty (30) days of receipt of notice of such failure;

(3) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) After the Commercial Operation Date, (x) the Project fails to achieve ninety percent (90%) of the Guaranteed ESS Capacity during annual performance testing conducted pursuant to Section 10.5(C), provided, that in no case shall such test be performed when major equipment is not operational; and (y) Seller fails to restore ESS Capacity to above ninety percent (90%) of the Guaranteed ESS Capacity referenced in Section 3.12 within one hundred eighty (180) days of such failure;; or

(6) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice.

(7) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including, but not limited to the Interconnection Agreement) required to make Product available at the Point of Delivery;

(3) Seller's failure to maintain in effect any agreements required to make Product available at the Point of Delivery;

(4) Seller's failure to comply with any other material obligation under this ESA, which would result in a material adverse impact on Buyer; or

(5) Subject to Section 7.3, Seller fails to timely register the Project as necessary, so that the Project is compliant with reporting requirements related to Future Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law with respect to Future Environmental Attributes in accordance with the terms of this ESA;

(6) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty-five percent (85%) over any twenty-four (24) consecutive Months during the Term excepting to the extent due to the MPT Failure (which exception may apply only twice during the Term), provided that the 30-Day cure period indicated in Section 12.1(B) does not apply and Seller remediates the cause of the shortfall of Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the eighty-five percent (85%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of a MPT Failure of the steps that Seller is taking to remediate the failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving such MPT Failure.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this ESA, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding

under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise;

(4) Buyer's assignment of this ESA except as permitted in accordance with Article 18; or

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this ESA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Buyer's actual fraud, waste, tampering with Seller-owned facilities or other material misrepresentation or misconduct in connection with this ESA or the operation of the Project;

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period; or

(3) Any representation or warranty made by Buyer in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term, if such cessation would reasonably be expected to result in a material adverse impact on Seller.

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12.3 Damages Prior to Termination.

(A) Upon the occurrence of an uncured Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this ESA from the Defaulting Party as set forth in Section 12.3(B); (ii) exercise its rights pursuant to Section 12.5; (iii) suspend performance; (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security; and (v) exercise its rights to terminate this ESA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date. If Seller is the Defaulting Party, the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include the Replacement ESS Costs notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which may include Future Environmental Attributes.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to

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establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of any actual or threatened breach of any material performance obligation of the other Party under this ESA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this ESA shall be cumulative of and shall be in addition to every other right or remedy provided for in this ESA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, either Party may send the other Party an invoice for such damages or other amounts as are due to the Party providing the invoice at such time from the other Party under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this ESA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE 13
## Contract Administration and Notices

13.1 Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered, mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this ESA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this ESA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this ESA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating

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Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than three (3) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, dispatch and scheduled Discharge Energy delivered, Charging Energy received, and House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) quarterly construction progress reports until the start of construction and monthly thereafter in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B); and (ii) reports of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this ESA; and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this ESA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, but not earlier than forty-five (45) days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built

drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; or (iv) does not, except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this ESA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller , in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this ESA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this ESA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was

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submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

## ARTICLE 14
## Force Majeure

14.1 Definition of Force Majeure Event.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises after the Execution Date that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic, including COVID-19, shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this Agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii)

any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws or material; or (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of three hundred sixty five (365) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this ESA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this ESA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Discharge Energy from the Project or to deliver Charging Energy to the Project or otherwise prevents the ability of the ESS to deliver Product, then the hours during which the Force Majeure Event occurs shall be excluded from the payment calculations as set forth in Section 8.1.

## ARTICLE 15
## Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of any mortgage, deed

of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this ESA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA.

(C) The obligations of Seller under this ESA are valid and binding obligations of Seller.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller will have upon generation of Discharge Energy, good and marketable title to the Future Environmental Attributes, when and if applicable, immediately prior to delivery to Buyer.

(J) Seller has not sold, delivered or transferred the Future Environmental Attributes, when and if applicable, to any other Person, in whole or in part.

(K) Subject to Section 7.3, all right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(L) [Reserved]

(M) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of

any material amendments to the Interconnection Agreement to Buyer.

(N) Except as expressly set forth in this ESA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(O) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(P) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this ESA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA.

(C) This ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

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(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

## ARTICLE 16
## Insurance

16.1 Evidence of Insurance.

(A) Except with respect to builder's risk insurance, evidence of which shall be provided to Buyer within five (5) Business Days after the start of construction, Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this ESA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this ESA shall cover occurrences during the Term of this ESA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this ESA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this ESA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17
## Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the ESA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this ESA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval, in connection with (i) the execution and performance of this Agreement; (ii) a final order or other regulatory determination from the NMPRC (A) that Buyer may recover the costs of ESS Payments; and (B) any waivers as set forth in Buyer's request for approval of this ESA (collectively,

"**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to a motion for rehearing or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller, Retail Customer and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this ESA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This ESA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if neither Buyer nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made by Buyer or Retail Customer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this ESA should remain in effect. Upon automatic termination, this ESA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA. If the Parties and Retail Customer are unable to mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties and Retail Customer conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(3) If the NMPRC, for any reason, has not entered an order upon the request for approval of all Requested Actions by [●] ("**Regulatory End Date**"), then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards

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applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that a Party contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

## ARTICLE 18
## Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this ESA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this ESA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this ESA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA.

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this ESA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this ESA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article

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18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this ESA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this ESA with the Affiliate as if such Person had been named under this ESA; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this ESA made without fulfilling the requirements of this ESA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this ESA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this ESA or the revenues or proceeds therefrom in connection with any financing, provided that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this ESA; and further provided that Seller shall not be relieved of any of its obligations or liability under this ESA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this ESA to Seller's Lenders pursuant to Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or

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foreclosure against Seller or this Agreement.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000 per MW multiplied by the Guaranteed Capacity ("**Development Security"**) within the earlier of (a) ninety (90) Days after the Execution Date and (b) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Fifty Thousand Dollars ($150,000) per MW multiplied by the Guaranteed Capacity (the "**Delivery Term Security**"). Seller shall replenish the Development Security and Delivery Term Security, as applicable, to such required amount within fifteen (15) Days after any draw by Buyer. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or Capacity Shortfall Damages and provided the Delivery Term Security. In the event that no amounts are due and owing by Seller to Buyer under this ESA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92$^{nd}$) day after termination of this ESA in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) days of expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter

of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this ESA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this ESA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this ESA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this ESA, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this ESA.

## ARTICLE 20
## Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be

liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the

indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

ARTICLE 21
Governmental Charges

21.1 Allocation of Governmental Charges. In the event of any contradiction between this Section 21.1 and Section 9.7, Section 9.7 shall control. In the event of any contradiction between this Section 21.1 and Section 22.2, this Section 21.1 shall control. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer the Product that are imposed prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of the Product that are imposed at and from the taking of the Product by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22
Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this ESA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this ESA shall remain in effect for the term of the transaction described herein. Absent the Parties'

written agreement, this ESA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Certain Third Party Beneficiary Rights.

(A) In executing this ESA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly provided in Section 22.4(B), nothing in this ESA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this ESA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this ESA, Retail Customer is an express third party beneficiary to this ESA. The provisions of this ESA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as an express third party beneficiary hereof as if it were a Party hereto. In addition and without limiting the foregoing, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer a copy of any notice of a change in the location of the Site provided to Buyer under Section 3.3;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project; and

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the ESA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the ESA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed. provided, that, the rights granted to the Retail Customer pursuant to this Section 22.4(B) shall expire, terminate and be of no further force and effect upon the expiration or termination of the Special Service Contract, regardless of the cause. Any termination or expiration of the Special Service Contract shall not otherwise affect the rights and obligations of the Buyer and Seller as set forth in this ESA.

(C) Buyer shall provide prompt notice (and in any case within five (5) Days)

to Seller of any termination of the Special Service Contract.

22.5 Relationship of the Parties.

(A) This ESA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to its employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this ESA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this ESA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the ESA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this ESA with a view toward effecting the purposes of this ESA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this ESA constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this ESA, this ESA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that such amendment, change, modification, or alteration

shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This ESA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this ESA are for ease of reference only and do not constitute a part of this ESA.

22.12 Counterparts. This ESA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this ESA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this ESA shall be brought in a court of competent jurisdiction in Albuquerque, New Mexico.**TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS ESA. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "**Receiving Party**" refers to the Party receiving information from the other Party.

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, tax credit transferees, potential Lenders, technical advisors, contractors, consultants, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this ESA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this ESA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this ESA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this ESA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this ESA that relates solely to this ESA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this ESA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information . In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential

treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall notify Buyer as soon as reasonably practicable of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("**Data Breach**") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access.

(A) Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this ESA and the Future Environmental Attributes that are generated under this ESA and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA and the creation, sale or retirement of such Future Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this ESA or the participation of the other Party

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in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this ESA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this ESA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this ESA constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this ESA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the ESA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the

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following provisions apply for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8-K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight

Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel, is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

(F) Seller shall provide Buyer all such information as Buyer shall reasonably request for Buyer or Retail Customer compliance with the Scope Reporting Rule.

22.19 Telephone Recording. Each Party to this ESA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this ESA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this Agreement in accordance with Section 12.4. In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any actual, potential, threatened, or requested breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Governmental Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and

circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. Seller will ensure that the contractors and subcontractors it retains in connection with this Agreement expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to an Event of Default under Section 12.1(B), Buyer shall have no obligation to make further payments hereunder following termination of this Agreement other than all payments due to Seller during the Term of this Agreement as of such termination date.

22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party to be responsible for, exporting and importing any equipment or property Seller or Seller Parties require to perform the services under this Agreement, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority.

(B) In no instance may Seller or Seller Parties list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List, or (ii) originated, offloaded or transferred to a different ship or carried in any Sanctioned Territory.

(D) The Seller shall provide to Buyer all Trade Control related documentation as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with) or respond to inquiries from any Government Authority in relation to, Trade Controls.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not (directly or indirectly) engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure that the Seller Parties it retains in connection with the performance of its obligations under this Agreement expressly agree in writing to the trade controls undertakings, representations, and warranties substantially similar to the provisions in this

Section 22.21.

(H) Notice. If (a) Seller becomes aware that any breach of the terms of this Section 22.21 has occurred, is likely to occur, or (b) Seller or any Seller Party has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days of obtaining knowledge thereof.

(I) Excusal and Release. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal or not reasonably practicable under Sanctions.

(J) Subject to Section 12.1(B)(7), Buyer may terminate this Agreement, within five (5) days and without further liability, upon written notice to the Seller, if the Seller has breached this Section 22.21 (A), (B), (C), or (E) in which case, the Buyer shall have no obligation to make further payments following termination of this Agreement; provided that to the extent permitted by Sanctions, Buyer has made all payments due to Seller during the Term of this Agreement as of the termination date.

22.22 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, Retail Customer's load or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this ESA, the Parties and Retail Customer shall negotiate in good faith to amend this ESA to resolve such changes in order to effect performance of this ESA, at the least possible cost to the Parties and Retail Customer, consistent with this ESA, including Section 7.4(A).

*[Signature page(s) follow]*

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IN WITNESS WHEREOF, the Parties have caused this ESA to be duly executed as of the date first above written. This ESA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

Name _____

Title _____

[●]

By _____

Name _____

Title _____

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**EXHIBIT A**
(to Energy Storage Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: [●]

   Location: [●]

2. Owner (if different from Seller):

3. Operator: [●]

4. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage

   b. Total number of units at the Project: [●]

   c. Total nameplate capacity (AC): [●] MW

   d. Total capacity at point of delivery: [●] MW

   e. Additional technology-specific information:

5. Project Schedule:

| Key Milestone | Date |
|---|---|
| LGIA Execution | |
| Major Equipment Supply Agreements Executed | |
| Discretionary Permits | |
| Close Financing | |
| 30% Design Complete | |
| Start of Project Construction | |
| First Major Equipment Delivered to Site | |
| Interconnection In-Service Date | |
| Commissioning Start Date | |
| Expected Commercial Operation | |
| Guaranteed Start Date | |

6. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the Energy Storage Agreement.

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**EXHIBIT B**
(to Energy Storage Agreement)

**ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagrams and communications and telemetry diagrams of the Project. The diagrams indicate the following:

   - Interconnection Facilities;
   - the network upgrades;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
   - communications and telemetry configuration with associated redundancy;
   - the House Energy power source and associated dedicated electric meter; and
   - redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is [●].

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**EXHIBIT C**[1]
(to Energy Storage Agreement)

**DESCRIPTION OF SITE**
PARCEL SURVEY FOR
[●] PROJECT

SURVEYOR'S DESCRIPTION of:

[1] NTD: To be updated ~60 days prior to COD.

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**EXHIBIT D**
(to Energy Storage Agreement)

**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**Notices:**

**Delivery Address:**
Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

**Invoices:**
Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:
PNMEAM@pnmresources.com

**Scheduling:**
Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

**Payments:**
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

**Wire Transfer:**
Wells Fargo Bank
ABA# [●]
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

**[●]**

**All Notices/Invoices:**

**Delivery Address:**
[●]
Attn: [●]
Phone: [●]

With copy to:
[●]

Attn: [●]
Phone: [●]

Mailing Address (if different from above):

**Wire Transfer: To Be Provided**

**With additional Notice of an Event of Default, termination and other legal notices to:**
Attn: [●]
Address: [●]
Phone: [●]

Attn: [●]
Address: [●]
Phone: [●]

**Project Manager:**

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**Contract Manager:**
Public Service Company of New Mexico
Attention: [●]
2401 Aztec Rd. NE
Albuquerque, NM 87107
Telephone: (505) [●]
Fax: (505) [●]

**With additional Notice of an Event of Default, termination and other legal notices to:**
Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

**With a copy to:**
Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

[●]
Attn: [●]
Address: [●]

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**EXHIBIT E**
(to Energy Storage Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

**FEDERAL**

[●]

**STATE**

[●]

**Other**

**[●]**

NOTE: Final actual permit requirements may vary from the above listings due to code and regulatory requirements as needed for Project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of the Agreement.

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**EXHIBIT F**
(to Energy Storage Agreement)

**COMMISSIONING AND ANNUAL TESTS**

All tests described in this Exhibit F will be conducted in accordance with equipment manufacturer's recommendations and current test procedures, including performance adjustments based upon ambient conditions. ESS Reliability Testing and Operational Reliability Testing may be run simultaneously.

**Commissioning Tests**

A. SCADA Functionality Test (or equivalent)
B. Automatic Generation Control (AGC) (or equivalent)
C. Voltage Setpoint Functionality Test
D. Historian and Data Link Functionality Tests
E. ESS Reliability Tests

**Commissioning and Annual Performance Tests**

A. ESS Unit Capabilities Tests, including:
    a. ESS Capacity Test including ESS Roundtrip Efficiency Determination
    b. ESS Response Shortfall Test
    c. Frequency Response Capability Test

**Commissioning Tests**

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

**A. SCADA Functionality Test**

**Purpose:**
This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available reasonably available and determinable points) and Buyer's Power Operations Engineering (POE). This test must be performed prior to commercial operation of the Energy Storage System (ESS).

**Procedure:**
Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall then contact Buyer's POE Team in advance to submit a database modification request (DBMOD) and request a time to perform the checkout.

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At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. Testing phases 1-3 (below) require only POE contacts, but phase 4 will also require Buyer's Operator support.

The test shall include, but is not limited to, the following verification:

1) Status points
   - Verify POE is receiving the intended state of Seller's switches and breakers
   - Verify POE can see and change the value of states of Seller's switches and breakers
   - Verify the functionality of the local/remote mode indication status

2) Analog points
   - Verify POE is receiving the intended value
   - Verify POE receives a changed value
   - Verify values have the correct scaling

3) Accumulator points (as applicable)
   - Verify POE is receiving an inserted value
   - Seller reverts to original value then verifies POE receives the new value
   - Verify values have the correct scaling

4) Control points (as applicable)
   - Verify the functionality of all breakers to be controlled by Buyer's POE
   - Verify the functionality of all switches to be controlled by Buyer's POE
   - Verify POE can control all reclosers
   - Verify on-site personnel have capability of changing states and values
   - Verify the functionality of all Setpoints
   - Verify the functionality of all feedback points

Completion of this test will be acknowledged verbally between Buyer's personnel and the stakeholders involved, and confirmed by Buyer promptly thereafter in writing (which may be via email). This test must be repeated for changes for the incremental portion to the states table(s) and/or list of points.

**B. Automatic Generation Control (AGC) Functionality Test**

Purpose:
This test will demonstrate the ability of the ESS to synch to AGC. This test will occur after the ESS system has energized.

System starting state:
The ESS will be in the on-line state with a SOC between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure:

Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour Operational activities.

**Remote Mode Testing**

Seller will set the ESS to REMOTE mode, and verify the unit accepts AGC.

- Operator will send a setpoint to the unit
- Validate the ESS unit responds to the setpoint
- Operator will send a setpoint above and/or below ESS operation limits
  - Validate the ESS sends alarms
  - Validate the ESS unit does not attempt to charge/discharge to the value sent

Buyer's Operator will set the AGC Control mode to MARKET:

- Validate the ESS unit responds to a DOT from CAISO

Buyer's Operator change the ESS to MARKET in AGC

- Validate the ESS unit changes the control mode
- Validate the ESS unit follows gross MW requested in Planner Pro

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG

- Hold for up to 10 minutes
- Validate the ESS unit responds to ACE of +/- 10 MW

**Local Mode Testing**

On-site personnel change the ESS to LOCAL mode

- Validate the ESS unit changes from REMOTE to LOCAL mode
- Validate the ESS unit follows gross MW requested on-site
- Validate the ESS unit does not respond to setpoint changes

System end state:
The ESS will be in the on-line state and with control mode set to LOCAL.

**C. Historian Data Link Functionality Test**

The Historian Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for ESS control.

Prior to testing, the Seller shall provide a list of available data points that are reasonably required to Buyer's generation engineering team (or agreed upon third party) and assist as necessary to set up the Historian Data Link.

Seller shall prepare and submit to Buyer a Historian Data Link Functionality Test procedure no later than thirty (30) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Historian Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Historian Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

## D. ESS Reliability Testing

### D.1 Cycling Reliability

A. Purpose of Test

To demonstrate the ability of the ESS to reliably perform full charging and discharging cycles.

B. Test Procedure

The cycling reliability test shall include the following test elements:

1. the discharging of the ESS from 100% of the Maximum State of Charge to 0% of the Maximum State of Charge followed by;
2. following a prescribed period of "rest" per the OEM guidelines, the charging of the ESS from 0% of the Maximum State of Charge to 100% of the Maximum State of Charge.

C. Test Results

The cycling reliability test shall be satisfied when the ESS successfully performs three (3) full charge and discharge cycles with the ESS control system in auto without any alarms that indicate an adverse condition that impacts system operations below operating specifications/nameplate, faults, trips, or manual intervention required.

### D.2 Operational Reliability

A. Purpose of Test

To demonstrate the short-term reliability of the ESS.

B. Test Procedure

The ESS shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system. The Parties shall work in good faith to combine the tests outlined in E.1 herein such that they will be performed at the same time.

C. Test Results

The operational reliability test shall be satisfied when the ESS remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any alarms, faults, trips, or manual intervention required.

**Commissioning and Annual Performance Tests**

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the ESA) throughout the term of the ESA.

**E. ESS Unit Capabilities Testing**

E.1 ESS CAPACITY TEST

E.1.1 General

The ESS Capacity Test ("**ESS Capacity Test**" or "**ECT**") is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

E.1.2 Requirements Applicable to all ESS Capacity Tests

A. Purpose of Test. Each ECT shall:

(1) verify compliance with the Guaranteed ESS Capacity or otherwise determine any lower ESS Capacity for the purposes of this ESA;

(2) determine the Roundtrip Efficiency (RTE) of the ESS;

B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

(1) discharge time (minutes);

(2) ESS Charging Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy In");

(3) ESS Discharge Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy Out");

(4) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to the Point of Delivery, in MWh ("Point of Delivery Energy Out");

(5) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh ("Point of Delivery Energy In");

C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

D. Test Elements and Sequence. Each ECT shall include the following test elements:

(1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);

(2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

(3) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;

(4) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity;

(5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

(1) General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor. In the event the system is outside of 0.99 to 1.01 adjustments may be made to the reported value as agreed upon between the parties. Voltage deviations may be within 2% of the Point of Delivery voltages, with the Seller agreeing to work in good faith

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to make necessary adjustments to match such voltages.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section F.1.2.F of these ESS Capacity Test Procedures.

(3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible. In no event will the test be performed in ambient temperatures above 50C or below -20C. De-rates are expected between ambient temperatures below -10C and above 40C.

(4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.

(5) Balancing. Seller, at its sole discretion, and subject to coordination with market operations, shall be permitted to take the system offline for balancing activities prior to test.

F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section F.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:

(1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for the ESS Electric Meter Device readings as well as

each required test result parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT;

(3) The ESS Capacity as determined by the ECT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section F.1.2.F of this ESS Capacity Test Procedure.

H. Supplementary ESS Capacity Test Protocol. No later than forty-five (45) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the "Supplementary ESS Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.

J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) excluding the rest period between charge and discharge cycles and the ESS Meter Energy In (MWh-AC) as below:

$$Roundtrip\ Efficiency\ (\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})} \times 100\%$$

F.2 ESS RESPONSE SHORTFALL TEST

**A. Purpose of Test:**

1. Determine the System Charge Latency of the ESS
2. Determine the Charge Ramp Rate of the ESS
3. Determine the System Discharge Latency of the ESS
4. Determine the Discharge Ramp Rate of the ESS

**B. Test Conditions:**

The ESS Facility will be in the on-line state at between 20% and 80% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. This test shall not cause the ESS to charge from the grid. The parties acknowledge that the existing metering regime as required by Buyer transmission may result in latency impacts, in which case Buyer and Seller shall work in good faith to amend this ESA in a commercially reasonable manner.

**C. Test procedure:**

**Measured Charge Latency:**

1. Send an active power charge command of PMAX to charge the batteries
2. The time measured from when the ESS receives the PMAX charge command until the power measured at the ESS Electric Metering Device changes from 0 MW to at least 1% of charge PMAX (subject to any ramp related restrictions imposed by the Transmission Provider) shall be the Actual System Charge Latency

**Measured Charge Ramp Rate:**

1. Send an active power charge command of PMAX to charge the batteries
2. The differential in MW of ESS Charging Energy divided by the time measured to ramp from 1% to charge PMAX (subject to any ramp related restrictions imposed by the Transmission Provider) with a plus-or-minus the greater of 2MW and two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Charge Ramp Rate.

**Measured Discharge Latency:**

1. Send an active power discharge command of PMAX to discharge the batteries
2. The time measured from when the ESS receives the PMAX discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge PMAX (subject to any ramp related restrictions imposed by the Transmission Provider) shall be the Actual System Discharge Latency

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**Measured Discharge Ramp Rate:**

1. Send an active power discharge command of PMAX to discharge the batteries
2. The differential in MW of ESS Discharge Energy divided by the time measured to ramp from 1% to discharge PMAX (subject to any ramp related restrictions imposed by the Transmission Provider) with a plus-or-minus the greater of 2 MW and two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Discharge Ramp Rate.

**D. Determination of ESS Response Shortfall:**

The calculation below will demonstrate the determination of the ESS Response Shortfall used to determine ESS Response Shortfall Damages according to Section 3.13. For clarity, any occurrence of an Actual System Charge Latency Shortfall, an Actual System Discharge Latency Shortfall, an Actual Discharge Ramp Rate Shortfall, or an Actual Charge Ramp Rate Shortfall shall be considered an ESS Response Shortfall that shall result in an ESS Response Shortfall Damage in accordance with Section 3.13. An ESS Response Shortfall Damage shall be due for each instance in which any of the following equations result in a positive value.

i. An "Actual System Charge Latency Shortfall" shall be calculated, which shall be equal to:

*Actual System Charge Latency Shortfall = Max (Guaranteed System Latency, Actual System Charge Latency) - Guaranteed System Latency*

An "Actual Charge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

*Actual Charge Ramp Rate Shortfall = Max (Guaranteed Charge Ramp Rate, Actual Charge Ramp Rate) - Guaranteed Charge Ramp Rate*

ii. An "Actual System Discharge Latency Shortfall" shall be calculated, which shall be equal to:

*Actual System Discharge Latency Shortfall = Max (Guaranteed System Latency, Actual System Discharge Latency) - Guaranteed System Latency*

iii. An "Actual Discharge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

*Actual Discharge Ramp Rate Shortfall = Max (Guaranteed Discharge Ramp Rate, Actual Discharge Ramp Rate) - Guaranteed Discharge Ramp Rate*

For the purposes of these equations Guaranteed Charge & Discharge Ramp Rate means either the Guaranteed values in Section 3.12 or such other Buyer selected lesser ramp rate values per this Section F.2 of this Exhibit F.

**F.3 Frequency Response Capability Test**

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## A. Purpose of Test:

Demonstrate that the Energy Storage System is able to react to simulated changes in frequency applied by injecting a Frequency Profile at the Site Controller level.

## B. Definitions:

| Term | Value/Meaning |
|---|---|
| Guaranteed PMAX Charge Power | [●] MW |
| Guaranteed PMAX Discharge Power | [●] MW |
| Guaranteed Frequency Response | [●] MW / 0.1 Hz |
| Point of Guarantee | [●] |
| Point of Measurement | [●] |
| CT Error | [●] %. The CT Error should be the error of the Current Transformer used during the test. |
| PT Error | [●] %. The PT Error should be the error of the Potential Transformer used during the test. |
| Meter Error | [●] %. The Meter Error should be the error of the Meter used during the test. |
| Loss Adjustment Factor | [●] %.<br>The Loss Adjustment Factor shall take into account all electrical losses, including cabling, switchgear, and transformer losses (load and no load) between the Point of Measurement and Point of Guarantee |
| $FreqLow$ | Low Frequency deadband setpoint |
| $FreqHigh$ | High Frequency deadband setpoint |
| $\Delta FreqLow$ | Frequency delta for low frequency |
| $\Delta FreqHigh$ | Frequency delta for high frequency |
| $\Delta Power\ Low$ | Power change for low frequency support |
| $\Delta Power\ High$ | Power change for high frequency support |

## C. Pre-Test Conditions:

1. If the ambient temperature is below 20°C during the 24 hours prior to the Test, the Energy Storage System shall be pre-heated for 8 hours prior to the test. If the ambient temperature is above 45°C, the Test shall be postponed until the temperature is expected to drop below 45°C for a minimum of 24 hours.
2. Charge or discharge the Energy Storage System so that its SOE is between 20% and 80%.
3. If a ramp rate is required, the Energy Storage System should be configured with the

appropriate ramp rate.
4. The Energy Storage System should report available discharge power that is equal to or greater than the Guaranteed PMAX Discharge Power (subject to reduction pursuant to the tests set forth in Sections F.1 or F.2 of this exhibit).
5. The Energy Storage System should report available charge power that is equal to or greater than the Guaranteed PMAX Charge Power (subject to reduction pursuant to the tests set forth in Sections F.1 or F.2 of this exhibit).
6. A frequency injection profile shall be applied at the Site Controller in the form XX test points. The frequency profile shall be agreed upon between the Parties prior to the test. The Site Controller shall be configured to source the frequency readings from the uploaded profile.
7. The charge portion of the test shall be conducted when energy available from the grid is expected to be greater than the Guaranteed PMAX Charge Power unless specified otherwise by Buyer. The Parties shall ensure that the Energy Storage System is not limited by the grid in its ability to discharge up to the Guaranteed PMAX Discharge Power throughout the duration of the test.

**D. Test Procedure:**

1. Confirm the Energy Storage System has zero output.
2. Initiate the reading from the Frequency Profile.
3. Wait for the full execution of the profile.

**E. Recorded Values:**

1. Battery Real Power (MW)
2. Grid Frequency (Hz)

**F. Acceptance Criteria:**

For each under-frequency event in the profile with a deviation from nominal of Frequency Low Deviation, in steady state:

$$Expected\ Power_{Under\text{-}Freq} * (1 - Meter\ Error) \leq Battery\ Real\ Power \leq Expected\ Power_{Under\text{-}Freq} * (1 + Meter\ Error)$$

Where the expected Energy Storage System response is defined as:

$$Expected\ Power_{Under\text{-}Freq} = \text{Min}\ [(\Delta PowerLow / \Delta FreqLow) * Frequency\ Low\ Deviation, Guaranteed\ Discharge\ PMAX]$$

Frequency Low Deviation = Simulated Frequency – FreqLow

For each over-frequency event in the profile with a deviation from nominal of *Frequency High Deviation*, in steady state:

$$Expected\ Power_{Over\text{-}Freq} * (1 - Meter\ Error) \leq Battery\ Real\ Power \leq Expected\ Power_{Over\text{-}Freq} * (1 + Meter\ Error)$$

Where the expected Energy Storage System response is defined as:

*Expected Power*$_{Over\text{-}Freq}$
= Max [(ΔPowerHigh / ΔFreqHigh)* *Frequency High Deviation*, -*Guaranteed Charging PMAX*]

*Frequency High Deviation* = *Simulated Frequency* – *FreqHigh*

**G. Grid-Forming Capabilities Tests (LATER)**

- Synthetic Inertia
- Voltage Persistence

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**EXHIBIT G**
(to Energy Storage Agreement)

**INSURANCE COVERAGES**

Seller shall obtain and maintain the following insurance coverages, at a minimum:

A. **Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. **Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

C. **Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

D. **Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. **Network Security and Privacy Liability**. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration,

corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

**F. Property Insurance**. During construction and operation, Seller shall provide or arrange the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost, subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

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**EXHIBIT H**
(to Energy Storage Agreement)

**AVAILABILITY GUARANTEES**

**Section 1. Definitions.**

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the ESA.

"**Actual ESS Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

"**Annual Report**" has the meaning set forth in Section 2.3 of this Exhibit.

"**ESS Availability Damages**" has the meaning set forth in Section 2.1(B) of this Exhibit.

"**ESS Available Hours**" means for a relevant Commercial Operation Month, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Year, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Year. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Excused Hours**" means, in any Commercial Operation Year, the aggregate Seller Excused Hours for such Commercial Operation Year to the extent that the ESS is affected during such hours; provided that, for purposes of the Guaranteed ESS Availability Percentage, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Period Hours**" means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year, provided, that for any leap year, ESS Period Hours means eight thousand seven hundred eighty-four (8,784) hours.

"**ESS Unavailable Hours**" means those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Discharge Energy to the Point of Delivery or accepting Charging Energy at the Point of Delivery. Any event that results

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in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Guaranteed ESS Availability Percentage**" has the meaning set forth in Section 2.1(A) of this Exhibit.

**Section 2. Availability Guarantees.**

1. ESS Availability Guarantee.

(A) ESS Availability Guarantee. Seller guarantees that the ESS shall achieve an Actual ESS Availability Percentage equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date ("**Guaranteed ESS Availability Percentage**").

(B) ESS Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed ESS Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to 50% of ESS Payment Rate per MWh below the Guaranteed ESS Availability. A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

2. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed ESS Availability Percentage shall be the payment of damages, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the ESA. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail to meet the Guaranteed ESS Availability Percentage.

3. Monthly Report. No later than the tenth (10th) Day of each calendar month during each Commercial Operation Year (or ten (10) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Monthly ESS Availability for the previous calendar month and the ESS Availability Damages, if any, due to Buyer (the "**Monthly Report**"). Such Monthly Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Monthly Report.

4. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the ESA.

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## ATTACHMENT 1 TO EXHIBIT H

## EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES

### I. Example of Monthly ESS Availability Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

| | | Hours |
|---|---|---|
| | Monthly Hours ("MH") | 720 |
| | ESS Unavailable Hours ("EUH") | 86 |

Given these assumed facts, the Monthly ESS Available Hours for the ESS during the specific calendar month would be calculated as follows:

Monthly ESS Available Hours = MH – EUH: 634 = 720 – 86

**Monthly ESS Availability**

Given these assumed facts, the Monthly ESS Availability for the Project during the specific calendar month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Sum of Monthly Hours: 720 hours

(c) Monthly ESS Availability: (Sum of Monthly ESS Available Hours/Monthly Hours) x 100 = (634/720) x 100 = 88.1%

### II. Example of ESS Availability Damages

Example of ESS Availability Damages based on the following assumed facts:

(a) Seller's Monthly Guaranteed ESS Availability = 90%.

(b) Seller's Monthly ESS Availability = 88.1%.

(c) Seller's Guaranteed ESS Capacity = 100 MW.

Given these assumed facts, Seller calculates the ESS Availability Damages for such calendar month due to Buyer as follows:

(Seller's Monthly Guaranteed ESS Availability – Seller's Monthly ESS Availability) (the latter two expressed as a decimal) x Monthly Hours (assuming a 30-day month) x ESS Availability LD Rate x Seller's Guaranteed ESS Capacity = ESS Availability Damage

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(0.90 – 0.881) x 720 x $[ ] x 100 = $[ ]

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 86 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

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**EXHIBIT I**
(to Energy Storage Agreement)

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

**A.** WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Energy Storage Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

**B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

**1.** **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

**(a)** Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].

**(b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty

(including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

**2. DEMANDS AND PAYMENT.**

**(a)** If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

**(b)** A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with *Section 9* below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

**(c)** After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

**(a)** it is a limited liability company duly organized and validly existing under the laws of the State of _____ and has the limited liability company power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

**(b)** no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and

**(c)** the execution, delivery and performance of this Guaranty has been duly and validly authorized by all limited liability company proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES;**

**(a)** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**5. AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6. WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

**(a)** Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and , for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty; (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (viii) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

**(b)** No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

**(c)** Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

**7. REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

**8. TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

**9. NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

| TO GUARANTOR: * | TO COUNTERPARTY: |
|---|---|
| [●]*Attn:* Treasurer | [●]*Attn:* |
| [Tel: [●] -- for use in connection with courier deliveries] | [Tel: [●] -- for use in connection with courier deliveries] |

Any Notice given in accordance with this *Section 9* will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10. MISCELLANEOUS.**

**(a)** This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.

**(b)** This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.

**(c)** This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

**(d)** The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

**(e)** Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**(f)** Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

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**(g)** COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

**1.** **THIRD PARTY BENEFICIARY RIGHTS.** This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

* * *

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IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[●]

By:_____

Name:_____

Title:_____

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**EXHIBIT J**
(to Energy Storage Agreement)

**COMMERCIAL OPERATION**
**FORM OF CERTIFICATION**

This certification ("Certification") of Commercial Operation is delivered by [●] ("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated [●] ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of [●] MW for [●] ([●]) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

| [●] | **[Licensed Professional Engineer]** |
|---|---|
| Signature: _____ | Signature: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| | Date: _____ |
| | License Number and LPE Stamp: _____ |

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**EXHIBIT K**
(to Energy Storage Agreement)

**ROUNDTRIP EFFICIENCY GUARANTEE**

| Year | Annual R/T Eff |
|---|---|
| 1 | [●]% |
| 2 | [●]% |
| 3 | [●]% |
| 4 | [●]% |
| 5 | [●]% |
| 6 | [●]% |
| 7 | [●]% |
| 8 | [●]% |
| 9 | [●]% |
| 10 | [●]% |
| 11 | [●]% |
| 12 | [●]% |
| 13 | [●]% |
| 14 | [●]% |
| 15 | [●]% |
| 16 | [●]% |
| 17 | [●]% |
| 18 | [●]% |
| 19 | [●]% |
| 20 | [●]% |

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**EXHIBIT L**
(to Energy Storage Agreement)

**ESS Operating Restrictions**

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions. Seller is authorized to utilize the BESS control system to enforce these ESS Operating Restrictions:

1. Except as allowed in Section 5.1(A), the amount of Discharge Energy at any point in time shall be limited to the interconnection limit minus the contemporaneous Energy production by the Solar Facility.

2. The number of ESS Equivalent Full Cycles in any Commercial Operation Year shall be limited according to Section 4.1(C).

3. The annual average state of charge percentage shall be maintained below fifty percent (50%) during any Commercial Operation Year.

4. Any delivery of Charging Energy from the grid will be in compliance with the terms of the Interconnection Agreement.

5. The ESS will be operated in accordance with Prudent Utility Practice.

In the event that Buyer's actions violate the above ESS Operating Restrictions, Buyer shall compensate Seller for actual additional maintenance requirements or remedy for any warranty claims directly related to such violation. If the Parties are unable to resolve any dispute concerning a claimed violation of the ESS Operating Restrictions, they shall proceed in accordance with Section 13.8 of the ESA.

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# EXHIBIT M

(to Energy Storage Agreement)

**ESS Functional Mapping**

The Project's NERC verified ESS Generation Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements information is as follows:

| | Entity Name | Point of Contact | E-mail | Phone |
|---|---|---|---|---|
| Generator Owner (GO) | | | | |
| Generator Operator (GOP) | | | | |
| Scheduling Coordinator Contact (SCC) | | | | |

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**EXHIBIT N**
(to Energy Storage Agreement)
**Example Interconnection Metering Diagram**

*Parties will work to develop metering configuration and procedure to account for multiple interconnection agreements that share one generation tie line.*

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**EXHIBIT O**
(to Energy Storage Agreement)

**COMMISSIONING AND TESTING PROCESS**

**Section 1. Purpose.**

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the ESA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Example Interconnection Metering Diagram as outlined in Exhibit N of the ESA and complete all testing as defined in Exhibit F of the ESA.

Any delays by Buyer (including Buyer's Contract Manager, Power Operations staff and Generation Engineering staff) to timely review submissions of information and requests for approval with respect to the commissioning and testing process as outlined herein ("**Buyer Commissioning Delays**") shall result in day-for-day extensions of the Expected Commercial Operation Date pursuant to Section 3.6 of the ESA.

Figure 1 is for reference purposes only.

**Section 2. Identifying Key Points of Contact.**

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the ESA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

*Table 1 – Required Information for Point of Contact List.*

| CONTACT | Company | Group | Address | Project Role | Office Phone | Mobile Phone | E-MAIL |
|---|---|---|---|---|---|---|---|
| (name) | PNM | Generation Engineering | 2401 Aztec Rd NE Albuquerque, NM 87107 | Contract Manager | 505-241-XXXX | 505-241-XXXX | …@pnm.com |

The POC List shall identify, but not be limited to, the following:

**Buyer Team:** Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.
- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.
- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.
- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.
- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect ("**PCI**") modeling for functionality required for the participating resource schedule coordination ("**PRSC**") (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.
- Power Operations, "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

**Seller Team:** The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- Project Manager – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.
- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.
- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

- Balancing Area Authority (BAA)
- Transmission Owner (TO)
- Transmission Operator (TOP)
- Generator Owner (GO)
- Generator Operator (GOP)
- Scheduling Coordinator (SC)
- Distribution System Operator (DSO)

**Section 3. Process Overview.**

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

**Section 3.1 Commissioning Kickoff Meeting.**

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

**Section 3.2 Pre-Commissioning.**

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1:

*Table 2: Pre-Commissioning Requirements*

| Requirement | Description | Responsible Party | Contributor(s) | Timeline for initial delivery |
|---|---|---|---|---|
| **Design Verification** | Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving ESA obligations, including grid forming inverters, metering, etc.] | **Seller** | Generation Engineering | After completion of IFC design phase of project |
| **Seller's SCADA Controls Narrative** | Controls narrative detailing items related to SCADA and telemetry planning. | **Seller** | PowerOps | 120 Days after Start of Construction |
| | Final DB Mod file delivered to PowerOps. | **Seller** | PowerOps | 10 Days prior to the scheduled Test Period |
| **Seller's Substation Commissioning** | Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing. | **Seller** | Buyer's Project Manager | Prior to performance testing |
| **Metering** | All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Example Interconnection Metering Diagram in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary. | **Seller** | PowerOps | Prior to performance testing |
| **CAISO Resource Registration** | Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration. | **Seller** | PowerOps | 180 Days prior to the scheduled Test Period |
| | A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. | **Seller** | PowerOps | 45 Days prior to transmission interconnection in-service date |
| | Buyer EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps. | **PowerOps** | Seller | |
| | Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter. | **Seller** | PowerOps | No later than 30 Days prior to the scheduled Test Period |
| **Power Operations Engineering Requirements for Commissioning** (Attachment 1) | This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data. | **PowerOps** | Seller | SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period. |
| **Power Operations & WPM Systems configuration** | EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent ESS resources for CAISO market participation. | **PowerOps & WPM IT Support** | Seller | Prior to the beginning of the scheduled Test Period |
| **Agreement for Grid Charging during testing** | During testing/commissioning of facilities, agreements need to be in place with a copy provided to Buyer to allow and plan for grid charging of batteries during the testing process. These agreements will clearly define WPM, GO, GOP or their SC, BA, TO and TOP. An interim strategy of true-up and banking may be acceptable based upon the circumstances. | **Seller** | Generation Engineering | Must be complete prior to the beginning of the scheduled Test Period. |
| **Operating Procedure** | Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering. | **Seller** | PowerOps | 90 Days prior to the Commercial Operation Date |
| | An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project | **Seller/Buyer** | Seller / PowerOps / Generation | 30 Days prior to the Commercial Operation Date |

| Requirement | Description | Responsible Party | Contributor(s) | Timeline for initial delivery |
|---|---|---|---|---|
| | into Buyer's system. | | Engineering | |
| **OEM Test Plan** | The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide manufacturers' test plans and provide results for Buyer to review. Buyer may be an observer for these tests and shall be provided with the results. | **Seller** | Generation Engineering | Test plans required 30 Days before the initiation of the OEM Test Plan |
| **Test Energy Plan & Schedule** | Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated ESA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans. | **Seller** | Generation Engineering | Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period. |
| **Commissioning Readiness Review Meeting** | Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: Attachment 2: Commissioning Readiness Review | **Generation Engineering** | Seller, PowerOps | 30 Days prior to the beginning of the scheduled Test Period |



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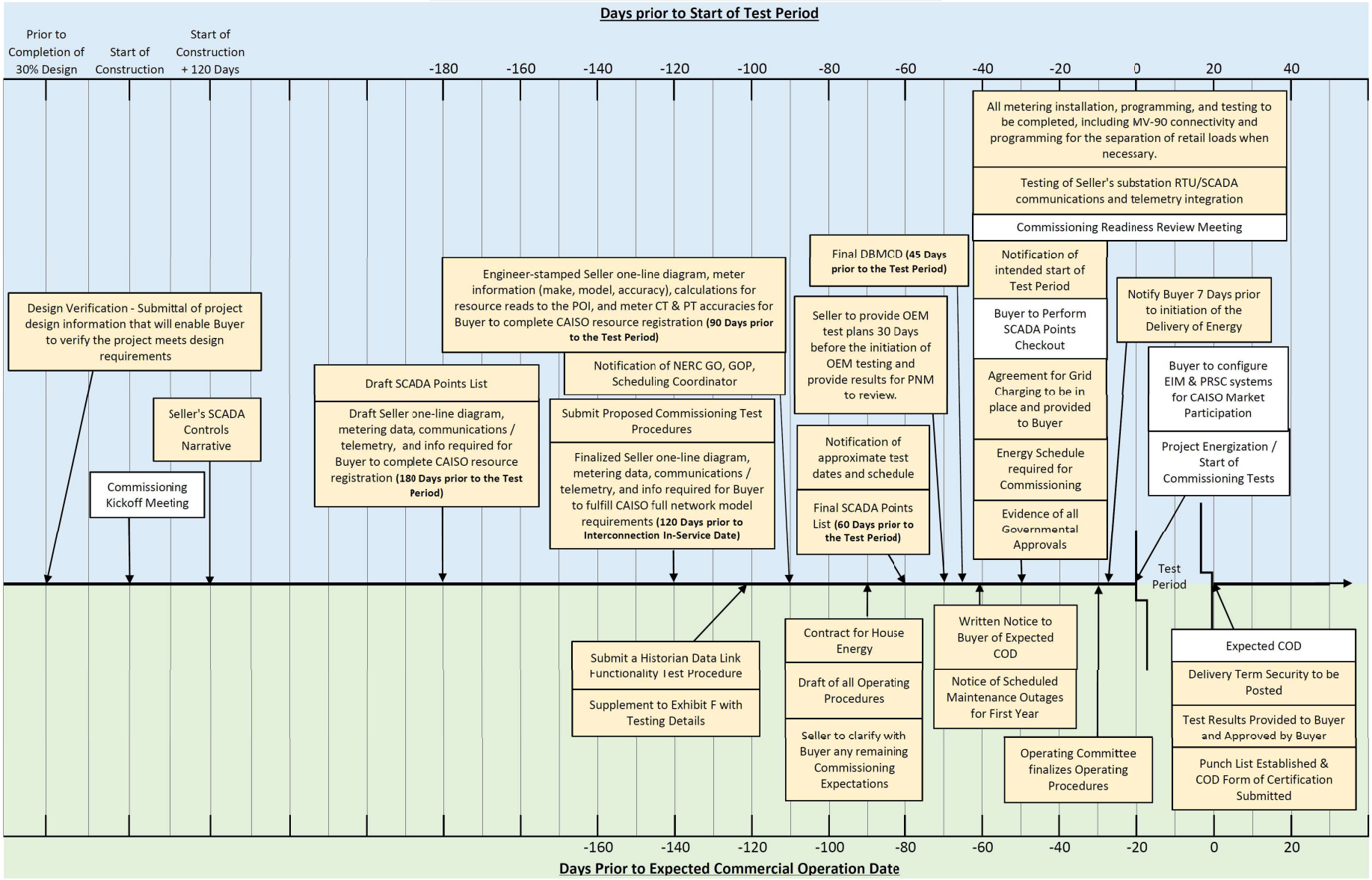
**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

**Section 3.3 Commissioning.**

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the ESA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.

- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Buyer Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the ESA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

**Section 3.4 Final Requirements Prior to COD.**

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:

  - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
  - Buyer teams responsible for review and approval of testing results include:
    - SCADA / Telemetry – Power Operations
    - AGC – Power Operations
    - Capabilities Tests – Generation Engineering
    - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

## ATTACHMENT 1 TO EXHIBIT O

## BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer prior to the beginning of the Test Period:
    a. Nameplate values: MW, MWh, round trip efficiency, etc.
    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All internet and metering based telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry associated with internet and metering communication paths must be independent of one another with no single point of failure.
    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.
    d. Telemetry for Seller's substation awareness shall include:
        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - ESS total gross values and total net values (in both MW and MVAr)
                - Gross and net values shall be provided for each resource registered with CAISO
            - Point of Delivery values – MW, MVAr
            - AGC setpoints for ESS and voltage setpoint. As well as the feedback for those setpoints.
            - Total ESS cycle count
            - Total ESS State of Charge (SOC) in both percent and MWH
            - Total real power target
            - Total full charge energy
            - Total nominal energy
            - Total energy Rem full power
            - Total max charge power

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e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. Testing for all AGC and voltage setpoints as defined in Exhibit F.

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## ATTACHMENT 2 TO EXHIBIT O

## COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. The expected result and how might the test evaluation results affect the program.
5. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
6. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and operational testers prior to any test using personnel.
7. The fallback plan should a technical issue or potential showstopper arise during testing.
    a. The test director that will decide if an issue is a showstopper.
8. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

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**EXHIBIT P**

**FORM OF LENDER CONSENT**

**CONSENT AND AGREEMENT**

This Consent and Agreement (this "***Consent***") is made and entered into as of ___ _, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

**RECITALS**

_____ ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of an energy storage facility owned by Seller and located in ____, [STATE] (the "***Solar Project***").

Seller and Buyer have entered into that certain Energy Storage Agreement, dated as of ____ (as amended, restated, supplemented or otherwise modified from time to time, the "***ESA***"), relating to the energy generated by the Solar Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the ESA (the "***Pledged ESA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

**AGREEMENTS**

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged ESA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged ESA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of solar energy facilities of comparable size to the Facility and the ability perform all aspects of the ESA; (d) has agreed in writing to be bound by the ESA and to assume all of Seller's obligations under the ESA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged ESA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of and after the date of assignment, the Facility Development Security Amount or the Operational Security, as applicable, and (iii) Buyer has not terminated the ESA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged ESA (a "*Subsequent Seller*"), may be substituted for Seller under the ESA and Buyer shall recognize such Subsequent Seller as its counterparty under the ESA and, subject to all rights and remedies of Buyer under the ESA, continue to perform its obligations

under the ESA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the ESA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the ESA. The transfer of the ESA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the ESA, Lender may cure such default by the deadline provided therefor in the ESA. Buyer will not terminate the PPA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the ESA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the ESA and (b) with respect to a default under Section 12.1(B)(8) or 22.21(A),(B),(C) or (E) of the ESA, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the ESA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the ESA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the ESAPPA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Solar Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. ESA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the ESA; provided that notwithstanding the foregoing, Buyer may terminate the ESA without Lender consent due to an uncured Event of Default under the ESA after the expiration of Lender's rights to cure under Section 4 hereof.

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the ESA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the ESA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the ESA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the ESA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy

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of the ESA is attached hereto as *Exhibit A* and the ESA has not been further amended, (v) Buyer is not in default of any of its obligations under the ESA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, Seller is not in default of any of its obligations under the ESA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, there are no material disputes between Buyer and Seller under the ESA, (viii) Buyer has not assigned any interest it has in the ESA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the ESA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the ESA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the ESA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the ESA.

8. Replacement Agreement. If the ESA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the ESA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the ESA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the ESA (other than the bankruptcy of Seller or a transfer of the Facility to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 18.1 of the ESA).

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the ESA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the ESA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this

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Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

**[BUYER]**

By: _____
Name: _____
Title: _____

**[LENDER]**

By _____
Its _____

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ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the ESA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the ESA, as and when required under the ESA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the ESA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the ESA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the ESA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the ESA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the ESA. Seller shall have no rights against Buyer, under the ESA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

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**EXHIBIT Q**

**Form of Estoppel Certificate**

**ESTOPPEL CERTIFICATE**

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Energy Storage Agreement, dated as of _____ (the "***ESA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a solar energy generating facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the ESA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the ESA have been duly authorized by all necessary action on the part of Buyer, (ii) the ESA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the ESA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the ESA is attached hereto as *Exhibit A* and the ESA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the ESA, Buyer is not in default of any of its obligations under the ESA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, Seller is not in default of any of its obligations under the ESA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, there are no material disputes between Buyer and Seller under the ESA, (viii) Buyer has not assigned any interest it has in the ESA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the ESA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the ESA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the ESA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the ESA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

[BUYER]

By: _____
Name: _____
Title: _____

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# EXHIBIT C
## *Form of Green Energy Rider*

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**ELECTRIC SERVICES**

**3rd REVISED RIDER NO. 47 CANCELLING 2nd REVISED RIDER NO. 47**

GREEN ENERGY RIDER

EXPLANATION OF RATE: This Green Energy Rider ("Rider") is available to eligible customers who wish to have the Company acquire SSC Resources (as that term is defined in the Special Service Contract) in an amount equal to some or all of the customer's electric utility usage requirements and who enter into a Special Service Contract, approved by the New Mexico Public Regulation Commission ("NMPRC"), that establishes the rates and other terms and conditions for such service. The Special Service Contract shall establish rates, pursuant to the methodology described in this Rider, that cover the Company's entire cost of the SSC Resources for the term of the Special Service Contract, with adequate provisions to secure the customer's payment obligation. The Alternative Capacity Projects that can serve the customer's needs must be acceptable to the customer and PNM.

Except as provided in the Special Service Contract, service will be furnished subject to the Company's Rules and Regulations and any subsequent revisions. These Rules and Regulations are available at the Company's office and are on file with the NMPRC. These Rules and Regulations are a part of this Schedule as if fully written herein.

In the event of a conflict or contradiction between the terms of the Special Service Contract and this Green Energy Rider, the terms of the Special Service Contract shall control.

TERRITORY: All territory served by the Company in New Mexico.

CUSTOMER ELIGIBILITY: To be eligible to take service under this Rider, a customer must meet all of the following conditions:

1) As of the date of commercial operation, any new customer served by this rider must not have previously received electric utility service from the Company.
2) The customer must enter into a Special Service Contract with the Company for a term that is coextensive with the customer's payment obligation for the renewable resources and Alternative Capacity Projects, and the NMPRC must approve the contract.
3) The customer must achieve a minimum demand of 10,000 kW.
4) Any new customer must cause the addition of SSC Resources of 10,000 kW-AC or more to be acquired by the Company.
5) The customer must maintain an annual load factor of at least 60%.
6) The customer must meet all of the requirements of Rate No. 36B.

The SSC Resources acquired for the customer that are interconnected to the PNM transmission or distribution system must adhere to the requirements governed by the Federal Energy Regulatory Commission (FERC) generation interconnection process as outlined in PNM's Open Access Transmission Service Tariff (OATT). The interconnection process, among other things, involves the study of the impacts of the generation facility to ensure that the proposed interconnection will not adversely affect PNM's system and the service to existing customers. The study may also identify upgrades to the PNM transmission or distribution system that may be required to accommodate the energy injection from the generation facility. Separate arrangements that are required to secure transmission service for the delivery of energy from the renewable resources are also governed by PNM's OATT.

RATE METHODOLOGY: The rates established in the Special Service Contract for service under this Green Energy Rider shall be consistent with the following:

1) If PNM acquires the SSC Resources through a purchased power agreement ("PPA"), energy storage agreement ("ESA"), or similar third-party agreement, the customer shall pay PNM the full cost of the agreement (except as otherwise provided in the Special Service Contract) in periodic, typically monthly, payments that coincide with PNM's payment obligation under the PPA.
2) If the SSC Resources are owned by PNM, the customer shall pay PNM monthly rates based on the Company's full cost of service revenue requirement for those SSC Resources, including a return on the investment equal to the Company's weighted average cost of capital, and operation and maintenance expenses, including fuel, or such other pricing structure as may be proposed by PNM and approved by the NMPRC that will fully reimburse PNM for the full cost of the SSC Resources. The initial revenue requirement shall be based on the cost of service used to set rates in PNM's most recent rate case and shall be adjusted, as necessary, in future rate cases.
3) PNM shall provide to the Customer an Excess Energy Production Credit in accordance with terms described in the Customer's Special Service Contract.

TAX ADJUSTMENT: Billings under this Rider may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the Company and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

LIMITATION OF RATE: Electric service under this Schedule shall not be resold or shared with others.

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# EXHIBIT D

*Form of Special Service Rate*

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**ELECTRIC SERVICES**

**6th REVISED RATE NO. 36B CANCELLING 5th REVISED RATE NO. 36B**

SPECIAL SERVICE RATE – RENEWABLE ENERGY RESOURCES

EXPLANATION OF RATE: This Special Service Rate, the companion Green Energy Rider (Rider No. 47) and the companion Production Cost Allocation Rider (Rider No. 49) are available to eligible customers who wish to have the Company acquire SSC Resources (as that term is defined in the Special Service Contract) in an amount equal to some or all of the customer's electric utility service requirements and who enter into a Special Service Contract, approved by the New Mexico Public Regulation Commission ("NMPRC"), that establishes the rates and other terms and conditions for such service. Rates covering the full cost of the renewable energy resources shall be established in the Special Service Contract pursuant to the Green Energy Rider. This Special Service Rate, along with the Production Cost Allocation Rider, prescribes the methodology that the Company and each customer will use in the Special Service Contract to establish all other charges to be paid by each customer for electric service. In each general rate proceeding, the Company will perform a separate class cost of service calculation for each Special Service Contract customer to ensure the accuracy of all charges. If the electric service requested by the customer requires the Company to extend or upgrade its transmission or other facilities, the cost of the extension or upgrade shall be paid by the customer to the extent consistent with generally accepted regulatory principles of cost causation, and shall be included in the rates set in the Special Service Contract, with adequate provisions to secure the customer's payment obligation.

Except as provided in the Special Service Contract, service will be furnished subject to the Company's Rules and Regulations and any subsequent revisions. These Rules and Regulations are available at the Company's office and are on file with the NMPRC. These Rules and Regulations are a part of this Schedule as if fully written herein.

In the event of a conflict or contradiction between the terms of the Special Service Contract and this Special Service Rate, the terms of the Special Service Contract shall control.

TERRITORY: All territory served by the Company in New Mexico.

CUSTOMER ELIGIBILITY: To be eligible for this Special Service Rate, a customer must meet all of the following conditions:

1) As of the date of commercial operation, any new customer served by this rate must not have previously received electric utility service from the Company.
2) The customer must enter into a Special Service Contract with the Company for a term that is coextensive with the customer's payment obligation for the renewable resources, and the NMPRC must approve the contract.
3) The customer must achieve a minimum demand of 10,000 kW.
4) The customer must maintain an annual load factor of at least 60%.
5) Any new customer must cause the addition of SSC Resources of 10,000 kW-A/C or more to be acquired by the Company.
6) The customer must meet all of the requirements of the Company's Green Energy Rider (Rider No. 47).

TYPE OF SERVICE: Three-phase service delivered at the Company's available transmission voltage of 115 kV or higher.

SUBSTATION EQUIPMENT: All substation and distribution transformers, the necessary structures, voltage regulating devices, lightning arrestors, and accessory equipment required by the customer in order to utilize the Company's service at 115 kV or higher voltage shall be installed, paid for, owned, operated, and maintained by the customer.

The customer shall also provide at its expense suitable protective equipment and devices so as to protect the Company's system and service and other electric users from disturbances or faults that may occur on the customer's system or equipment.

The customer shall at all times keep each of the three phases balanced as far as practicable so as not to affect service and voltage to other customers served by the Company. The customer shall not operate any equipment in a manner which will cause voltage disturbances elsewhere on the Company's system.

MONTHLY CHARGE: The Charge for electric service provided shall be the sum of charges calculated in accordance with A, B, C, D, E, F, G and H below. On-Peak period is from 8:00am to 8:00pm Monday through Friday (60 hours per week). Off-Peak period is all times other than the On-Peak period (108 hours per week).

Individual Rates shall be calculated for Rate Elements A, B, D, E, and F for each customer taking service under this rate based on each customer's load characteristics and SSC Resource procurements made by the Company consistent with class Allocated Revenue Requirement.

(A) CUSTOMER CHARGE:

All Months:

| Customer | Customer Charge |
|---|---|
| "A" or Greater Kudu | $21,857.02 per bill |
| "B" | Placeholder for new customer |

(B) TRANSMISSION DEMAND CHARGE:

All months:

| Customer | Customer Charge |
|---|---|
| "A" or Greater Kudu | $4.525 per Billable On-Peak kW |
| "B" | Placeholder for new customer |

(C) FUEL COST ADJUSTMENT APPLIED TO SYSTEM SUPPLIED ENERGY:

During each hour when the energy from the SSC Resources, including discharge of SSC Storage Resources, acquired by PNM to meet all or part of the customer's load is less than the customer's hourly usage, the balance of hourly energy will be supplied by other energy resources available to PNM for overall system needs. For all hourly energy supplied by PNM's other energy resources, except to the extent of curtailments of SSC Resources for which the customer is paying the fixed price for energy and RECs in the Third Party PPA as provided in Section 8.1 of the SSC, the customer will pay 100% of the fuel rates under the Company's Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC") applicable to transmission voltage customers.

(D) ENERGY RELATED NON-FUEL CHARGE FOR SYSTEM SUPPLIED ENERGY:

During each hour when the energy from the SSC Resources, including discharge of SSC Storage Resources, acquired by PNM to meet all or part of the customer's load is less than the customer's hourly usage, the balance of hourly energy will be supplied by other energy resources available to

PNM for overall system needs. For all hourly energy supplied by PNM's other energy resources, except to the extent of curtailments of SSC Resources for which the customer is paying the fixed price for energy and RECs in the Third Party PPA as provided in Section 8.1 of the SSC, the following energy related non-fuel charge is applicable.

Energy Related Non-Fuel Charge:

| Customer | Customer Charge |
|---|---|
| "A" or Greater Kudu | $0.0242411 per kWh |
| "B" | Placeholder for new customer |

(E) CONTRIBUTION TO PRODUCTION COMPONENT:

All months:

| Customer | Customer Charge |
|---|---|
| "A" or Greater Kudu | $X.XX per Billable On-Peak kW |
| "B" | Placeholder for new customer |

(F) GREEN ENERGY RIDER CHARGE:

Pursuant to the Green Energy Rider No. 47, the customer will be responsible for all costs associated with SSC Resources procured to meet all or part of the customer's load.

(G) OTHER APPLICABLE RIDERS:

Rider No. 36 – Renewable Energy Rider, and all other applicable rate riders shall be billed to the customer in accordance with the terms of the riders, and consistent with applicable statutes and NMPRC rules. Rider No. 16 -- the Energy Efficiency Rider shall not be applicable.

(H) SPECIAL TAX AND ASSESSMENT ADJUSTMENT:

Billings under this Schedule may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the Company and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

DETERMINATION OF MONTHLY ON-PEAK BILLABLE DEMAND: The monthly on-peak billable demand shall be as determined by appropriate measurement as defined by the Company, but in no event shall it be less than the highest of the following: (a) the actual highest On-Peak metered demand registered during the current month, or (b) 10,000 kW. On-Peak period is from 8:00am to 8:00pm Monday through Friday (60 hours per week). Off-Peak period is all times other than the On-Peak period (108 hours per week).

INTERRUPTION OF SERVICE: The Company will use reasonable diligence to furnish a regular and uninterrupted supply of energy. However, interruptions or partial interruptions may occur or service may be curtailed, become irregular, or fail as a result of circumstances beyond the control of the Company, or are the results of acts of public enemies, accidents, strikes, legal processes, governmental restrictions, fuel shortages, breakdown or damages to generation, transmission, or distribution facilities of the Company, repairs or changes in the Company's generation, transmission, or distribution facilities, and in any such case the Company will not be liable for damages. Customers whose reliability requirements exceed these normally provided should advise the Company and contract for additional facilities and increased reliability as may be required. The Company will not, under any circumstances, contract to provide 100 percent reliability.

ACCESSIBILITY: Equipment used to provide electric service must be physically accessible. The metering must be installed on each service location at a point accessible to Company personnel at any time.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

LIMITATION OF RATE: Electric service under this Schedule shall not be resold or shared with others.

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**EXHIBIT D1**

*Special Service Rate Calculation*

(A) CUSTOMER CHARGE: There shall be a monthly customer charge that is designed to recover the cost of all customer-related functions, including meters, meter reading and billing costs, as determined and allocated to customer rate classes in PNM general rate cases.

(B) TRANSMISSION DEMAND RATE: This rate is applied to a customer's monthly On-peak Billable Demand and is designed to recover costs related to PNM's transmission capacity, as determined and allocated to customer in PNM general rate cases. The Transmission Demand Rate shall be calculated as described below:

The Transmission Demand Rate shall be the quotient of:

(1) The Transmission Revenue Requirement allocated to Customer under Rate No. 36B--Special Service Rate, in PNM's general rate case, divided by:
(2) The sum of Customer's annual billable demands.

(C) CONTRIBUTION TO PRODUCTION COMPONENT: This rate is applied to Customer's monthly On-peak Billable Demand and is designed to recover production costs ("**Contribution to Production Component**"). The Contribution to Production Component in a rate case will be calculated based on the Customer's Production Revenue Requirement and the Production Revenue Requirement Offset, as described below.

The Production Revenue Requirement shall be the product of:

The quotient of:
(1) The total system retail Production Revenue Requirement used to set rates in PNM's general rate case divided by:
(2) The sum of all system retail Production-related Coincident Peak Demand Loads used to allocate the retail Production Revenue Requirement to rate classes in PNM's general rate cases.

Multiplied by:
(3) The sum of Customer's Coincident Peak Billable Demand Loads used for the allocation of the Production Revenue Requirement.

The Production Revenue Requirement Offset shall be the product of:

The quotient of:
(1) The result of (1) and (2) above,

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Multiplied by:

(2) The sum of Coincident Peak Production for all SSC Energy Resources plus the sum of all SSC Storage Resource Capacity Value Factors times their applicable certified rated capacity, deemed to have capacity value at the time of each PNM general rate case utilizing the methodology set forth in Section D (**"Coincident Peak Production Methodology"**).

The Contribution to Production Component shall be the quotient of:

(1) The Production Revenue Requirement minus:
(2) The Production Revenue Requirement Offset.

Divided by:

(3) The sum of Customer's annual billable demands (excluding any demands related to charging SSC Storage Resources); provided, however, if the Production Revenue Requirement Offset is greater than the Production Revenue Requirement, then the Contribution to Production Component will be set to zero ($0.00).

(D) COINCIDENT PEAK PRODUCTION METHODOLOGY:

(1) The coincident peak periods proposed in PNM's general rate cases for class allocations are based on anticipated highest demand hours for rate classes ( **"CP Peak Hours"**).
(2) For each SSC Energy Resource that has been in service for at least three years, PNM will use the average historical hourly energy production for those same three years during each of PNM's historical coincident peak periods at the CP Peak Hours as the SSC Energy Resource's Coincident Peak Production. If an SSC Energy Resource was curtailed during any CP Peak Hour for reasons where PNM owes compensation to the seller under the respective Third Party PPA (as provided for in Section 8 of the SSC), PNM shall adjust the production of that resource to reflect what the production during that CP Peak Hour would have been had it not been curtailed.
(3) For any SSC Energy Resource with less than three years of historical hourly production data, PNM will assume an effective Coincident Peak Production of 32% for wind (**"Stipulated Wind Capacity Value Factor"**), 42% for solar (**"Stipulated Solar Capacity Value Factor"**)
(4) For any SSC Storage Resource, the Company will use the agreed **SSC Storage Resource Capacity Value Factor** for that resource.
(5) A reconciliation of the Production Revenue Requirement Offset will occur for all SSC Energy Resources for any Test Period for which Stipulated Capacity Value Factors were utilized for cost allocation purposes as defined in Rider No. 49. For this reconciliation PNM will compare the Production Revenue Requirement in the Test Period of the last rate case to the Production Revenue Requirement Offset as calculated below. For this comparison, the Production Revenue Requirement Offset will be based on:
    - For SSC Energy Resources with less than 3 years of history, the

actual aggregate Coincident Peak Production during the Test Period. For all other SSC Energy resources, calculated as provided in (D)(2) above.

- For SSC Storage Resources, the Coincident Peak Production will be the SSC Storage Resource Capacity Value Factor.

ii. If the Production Revenue Requirement Offset calculated above is less than the Production Revenue Requirement from the last rate case, a deemed under-allocation from the Customer occurs. PNM will quantify the total deemed under-allocation of production costs for the Test Period, including any period up to the implementation of the Reset Rate, by recalculating Exhibit D1, as provided for in Rider 49.

(E) FUEL COST ADJUSTMENT APPLIED TO SYSTEM SUPPLIED ENERGY: During each hour when the energy from the SSC Resources, including discharging of SSC Storage Resources acquired by PNM to meet all or part of the customer's load, including discharging of SSC Storage Resources is less than the customer's hourly usage, the balance of hourly energy will be supplied by other energy resources available to PNM for overall system needs. For all hourly energy supplied by PNM's other energy resources, except to the extent of curtailments of SSC Resources for which the customer is paying the fixed price for energy and RECs in the Third Party PPA as provided in Section 8.1 of the SSC, the Customer will pay 100% of the applicable base fuel rate and fuel factor rate under PNM's Fuel and Purchased Power Cost Adjustment Clause (**"FPPCAC"**) applicable to transmission voltage customers.

(F) ENERGY RELATED NON-FUEL CHARGE FOR SYSTEM SUPPLIED ENERGY: Certain energy related costs are not currently included as fuel costs in PNM rates. To ensure that no subsidization by other retail customers takes place, PNM has set the energy related non-fuel rates for System Supplied Energy as determined in the corresponding PNM general rate case. This charge shall exclude SSC Resource curtailed energy for which PNM is supplying energy to Customer from other system resources.

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## EXHIBIT E

*Methodology for Determining Early Termination Payment*

The Early Termination Payment shall be equal to the sum of the Contract Values for each of the Initial Solar Facilities Power Purchase Agreement and any Additional Renewable Energy Procurement (together, **"Renewable Energy Procurement"**) then in effect, at the time of termination, payable within twenty (20) days after Customer receives notice from PNM of the amount of the Early Termination Payment. PNM shall reimburse Customer for Transfer Proceeds within twenty (20) days of receipt of a final, non-appealable order from the NMPRC establishing the amount of the Transfer Proceeds, if any, and in the case of other Proceeds, within twenty (20) days after receipt by PNM of the Proceeds.

**"Contract Value"** means the present values of the product, for each year (or portion thereof) in the then remaining term of the SSC Resource Procurement (determined without reference to the early termination), of (A) the quantity of energy and RECs expected to be produced during such year (or portion thereof) times (B) the purchase price for such energy and RECs for such year, provided, however:

(1) if PNM in its sole discretion decides to terminate an SSC Resource Procurement as a result of an early termination of the Special Service Contract, Contract Value shall be equivalent to the early termination payment calculated pursuant to the SSC Resource Procurement; or

(2) if PNM in its sole discretion decides to acquire ownership of a renewable energy facility that was the subject of a Renewable Energy Procurement, Contract Value shall be the original cost of the facility at the time the facility began providing service to the Customer plus all capital improvements less depreciation, or such other valuation approved by the NMPRC, to the extent the NMPRC allows the resource to be included in cost of service to all other customers; provided, however, that in no event shall Transfer Proceeds exceed Contract Price.

All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of the Special Service Contract.

**"Proceeds"** means payments received by PNM as a result of damages payments and insurance claims made by the Seller pursuant to any SSC Resource Procurement as well as any credit received by PNM for insurance in computing the early termination payment of any SSC Resource Procurement.

**"Transfer Proceeds"** means: (A) if the SSC Resource Procurement is from a third party, the present value of the SSC Resource Procurement charges to PNM allowed to be recovered as a system resource from other customers by the NMPRC, calculated in the same manner as "Contract Value"; or (B) if the SSC Resource Procurement is a facility owned by PNM, or sought to be acquired by PNM, the original cost of the facility at the time the facility began providing service

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to the Customer plus all capital improvements less depreciation, or such other valuation approved by the NMPRC, to the extent the NMPRC allows the resource to be included in cost of service to all other customers; provided, however, that in no event shall Transfer Proceeds exceed Contract Price.

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**EXHIBIT F**
*Form of Guaranty*

**GUARANTY OF** [CUSTOMER]
**BY** [NAME OF GUARANTOR]

THIS GUARANTY (this "Guaranty") is made as of [DATE], by [NAME OF GUARANTOR], a [STATE][ENTITY] ("Guarantor"), with a mailing address of [ADDRESS], Attention: [NAME], for the benefit of Public Service Company of New Mexico, a New Mexico corporation ("Counterparty").

**RECITALS:**

A. Counterparty and [CUSTOMER], a [STATE][ENTITY] ("Obligor"), entered into that certain Special Service Contract, dated as of the date hereof, between Counterparty and Obligor (as modified from time to time, the "Agreement").

B. Obligor is Guarantor's wholly-owned subsidiary.

**AGREEMENT:**

NOW, THEREFORE, in consideration of Counterparty's agreement to allow for Obligor's provision of this Guaranty, Guarantor hereby unconditionally and irrevocably guarantees the prompt payment by Obligor of all sums payable by Obligor under the Agreement all without regard to any counterclaim, set-off, deduction or defense of any kind which Obligor or the Guarantor may have or assert, and without abatement, suspension, deferment or diminution on account of any event or condition whatsoever; provided, however, that Guarantor shall be entitled to exercise or assert, as the case may be, any right, claim or defense that is available to Obligor, except as such right, claim or defense relates to bankruptcy, lack of capacity or lack of authority.

It is specifically agreed by Counterparty and Guarantor that (i) the terms of the Agreement may be modified by agreement between Counterparty and Obligor and that this Guaranty shall guarantee the performance of Obligor as so modified and (ii) the Agreement may be assigned by Counterparty to any assignee of Counterparty upon no less than ten (10) days' prior written notice to Guarantor. This Guaranty is a guarantee of payment and not of collection.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Counterparty to enforce any of the rights or remedies of Counterparty under the Agreement. This Guaranty shall continue to be effective or be reinstated if any payment to the Counterparty by Obligor with respect to the Agreement is returned to Obligor or is rescinded upon the insolvency, bankruptcy or reorganization of Obligor.

No notice of default by Obligor under the Agreement need be given by Counterparty to Guarantor, it being specifically agreed that Guarantor's guarantee is a continuing guarantee under which Counterparty may proceed immediately against Obligor and/or against Guarantor

following any breach or default by Obligor under the Agreement beyond applicable notice and cure periods or for the enforcement of any rights which Counterparty may have as against Obligor under the terms of the Agreement or at law or in equity.

Counterparty shall have the right to proceed against Guarantor following any breach or default by Obligor under the Agreement beyond applicable notice and cure periods without first proceeding against Obligor and without previous notice to or demand upon either Obligor or Guarantor.

Guarantor hereby waives (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) any right to require Counterparty to proceed against Obligor or any other guarantor or any other person or entity liable to Counterparty, (d) any right to require Counterparty to apply to any default any security deposit or other security it may hold under the Agreement, (e) any right to require Counterparty to proceed under any other remedy Counterparty may have before proceeding against Guarantor, and (f) any right of subrogation that Guarantor may have against Obligor.

Guarantor does hereby subordinate all existing or future indebtedness of Obligor to Guarantor to the obligations owed to Counterparty under the Agreement and this Guaranty.

Any recovery by Counterparty from any other guarantor or insurer shall first be credited to the portion of Obligor's indebtedness to Counterparty which exceeds the maximum liability of Guarantor under this Guaranty.

The Guarantor hereby represents and warrants that: (i) the Guarantor is duly organized, validly existing and in good standing under the laws of Delaware; (ii) the Guarantor has the requisite corporate power and authority to issue this Guaranty and to perform its obligations hereunder, and has duly authorized, executed and delivered this Guaranty; (iii) the Guarantor is not required to obtain any authorization, consent, approval, exemption or license from, or to file any registration with, any government authority as a condition to the validity of, or to the execution, delivery or performance of, this Guaranty; (iv) as of the date of this Guaranty, there is no action, suit or proceeding pending or threatened against the Guarantor before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations under, or which in any manner questions the validity of, this Guaranty; (v) the execution, delivery and performance of this Guaranty by the Guarantor does not contravene or constitute a default under any statute, regulation or rule of any governmental authority or under any provision of the Guarantor's certificate of incorporation or by-laws or any contractual restriction binding on the Guarantor; and (vi) this Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, subject to the effect of any bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

No provision of this Guaranty or right of Counterparty can be waived, nor can Guarantor

be released from its obligations hereunder except in a writing signed by Counterparty. This Guaranty shall remain in full force and effect until the date on which all of Obligor's obligations under the Agreement have been completely performed and paid in full or are no longer due or payable.

This Guaranty shall be governed by the laws of the state of New Mexico and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of New Mexico.

If any action is brought by Counterparty against Guarantor under this Guaranty to enforce the obligation of Guarantor hereunder, the unsuccessful party in such action shall pay to the prevailing party therein reasonable attorneys' fees. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

Any notice, demand, protest or request provided for in this Guaranty, or served, given or made in connection with it, will be deemed properly served, given or made: (i) when delivered personally or by prepaid overnight courier, with a record of receipt; (ii) on the fourth day if mailed by certified mail, return receipt requested; or (iii) on the day of transmission, if sent by facsimile or electronic mail during regular business hours or the day after transmission, if sent after regular business hours (provided, however, that such facsimile or electronic mail will be followed on the same day or next business day with the sending of a duplicate notice, demand or request by a nationally recognized prepaid overnight courier with record of receipt), to the persons specified below:

To Guarantor:

With a copy to:

To PNM:

With a copy to:

Guarantor and Counterparty may, at any time or from time-to-time, by written notice to the other, change the designation or address of the person so specified as the one to receive notices pursuant to this Guaranty.

Guarantor may not assign this Guaranty, or assign or delegate any of its rights or obligations hereunder, without the prior written consent of Counterparty, which consent may be granted or withheld in its sole discretion, and any assignment or delegation without such prior written consent shall be null and void and of no force or effect.

This Guaranty shall be binding upon Guarantor, its successors and permitted assigns and shall inure to the benefit of and be enforceable by Counterparty, its successors and assigns. This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof. Any

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provision of this Guaranty that is prohibited or unenforceable under applicable law shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. The remedies provided in this Guaranty are cumulative and not exclusive of any remedies provided by law or in equity.

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty as of the date and year first above written.

**GUARANTOR:** **[NAME OF GUARANTOR],**

By: _____
Name: _____
Title: _____

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**EXHIBIT G**
*Notice List*

All Notices are deemed provided in accordance with **Section 17** if made to the physical and email addresses provided below:

| PUBLIC SERVICE COMPANY OF NEW MEXICO | GREATER KUDU, LLC |
|---|---|
| To: | To: |
| Public Service Company of New Mexico<br>Attn: Senior Vice President and CFO<br>414 Silver Ave. SW<br>Albuquerque, NM 87102<br>Henry.Monroy@txnmenergy.com | Greater Kudu, LLC<br>c/o Meta Platforms, Inc.<br>Attention: Clean Energy Asset Management<br>1 Meta Way<br>Menlo Park, CA 94025<br>Email: energycontracts@meta.com |
| With copy to: | With copy to: |
| Public Service Company of New Mexico<br>Attn: Legal Department<br>414 Silver Ave. SW<br>Albuquerque, NM 87102<br>lawdept@txnmenergy.com | Meta Platforms, Inc.<br>7300 Gateway Blvd<br>Dock 15<br>Attn: Associate General Counsel, Energy<br>Newark, CA 94560<br><br>and a copy by email to:<br>energylegal@meta.com |

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# EXHIBIT H

*Form of Production Cost Allocation Rider*

PUBLIC SERVICE COMPANY OF NEW MEXICO ELECTRIC SERVICES
1st REVISED RIDER NO. 49 CANCELLING ORIGINAL RIDER NO. 49

PRODUCTION COST ALLOCATION RIDER

EXPLANATION OF RIDER: The purpose of the Production Cost Allocation Rider ("Rider") is to provide for recovery of under-collected production costs from an applicable customer pursuant to the terms and conditions of the Special Service Contract. An under-collection of the customer's allocated production costs will be deemed to occur if the Actual Production Revenue Requirement Offset resulting from the SSC Resources serving the customer, during the Test Period of a general rate case, is less than the Production Revenue Requirement upon which rates had previously been set.

The Special Service Contract with the customer shall establish a methodology to determine the customer's Contribution to Production Component. Except as provided in the Special Service Contract, service will be furnished subject to the Company's Rules and Regulations and any subsequent revisions. These Rules and Regulations are available at the Company's office and are on file with the NMPRC. These Rules and Regulations are a part of this Schedule as if fully written herein.

TERRITORY: All territory served by the Company in New Mexico.

APPLICABILITY: This Rider shall apply to all customers taking service under Rate No. 36B – Special Service Rate, and Rider No. 47 – Green Energy Rider.

DEFINITIONS: The following definitions shall apply to this Rider:

CP Peak Hours: Coincident peak periods proposed in the Company's general rate case for class allocations based on anticipated highest demand hours.

Coincident Peak Production: The sum of coincident peak production for all SSC Resources that were used in a PNM general rate case utilizing the methodology set forth in the Special Service Contract.

Deemed Under-Allocation: Quantification of the total Test Period under-allocation and resulting under-collection of production costs for the period starting with the first date of the Test Period from the Company's last rate case and ending with the effective date of new base rates in the subsequent Company's rate case filing.

Reset Rate: Deemed under- allocation of production costs as defined in the Special Service Contract divided by 12 months and applied monthly to the Customer's bill ($/month).

Interim Period Charge: has the meaning set forth below in the Rate Methodology Section.

SSC Resource: means any energy generation or storage, or capacity, resource contracted with by PNM on Customer's behalf pursuant to the Special Service Contract.

Stipulated Capacity Value Factor: The effective capacity value for any particular SSC Energy Resource stipulated between the Company and the Customer within the Special Service Contract to be used in a Company rate case in lieu of historical hourly production data.

RATE METHODOLOGY: The Rates established under this rider have two components. The first rate

component is the Reset Rate. It is ongoing and collects any under allocation determined in the previous rate case. This rate component will remain in effect from the time this rider goes into effect until the effective date of a subsequent rate case where the base rates are reset.

The second component is the Interim Period Charge. It is limited to collect any deemed under allocation experienced from the effective date of the base rates approved in the last rate case through the effective date of this Rider. This rate component will remain in effect for 6 months beginning at the effective date of this Rider.

The two rate components under this Rider shall be established as follows:

1) For the Reset Rate, within four months of the end of the Test Period in a general rate case, the Company will compare the Production Revenue Requirement as approved in the last rate case to the Production Revenue Requirement Offset. For this comparison, the Production Revenue Requirement Offset will be based on actual production in the Test Period for all of the SSC Energy Resources (except for adjustments to be made due to curtailments of SSC Resources where PNM owes compensation to the seller under the respective Third Party PPA as provided for in Section 8 of the SSC), that used a Stipulated Capacity Value as applicable. For all other SSC Energy Resources that have been in service for at least three years as of the date of the filing of the last rate case, PNM will use the same historical average energy production as projected in the last rate case. For SSC Storage Resources, the company will use the same SSC Storage Resource Capacity Value Factor as previously agreed by the Parties for each respective SSC Storage Resource per the terms of the Special Service Contract. If the Production Revenue Requirement Offset as calculated above is less than the Production Revenue Requirement approved in the last rate case, an under-allocation of production costs to the customer will be deemed to occur.

   Any Deemed Under-allocation will be calculated for the applicable Test Period on an annual basis and recovered through this Rider in equal monthly amounts until reset to zero upon the effective date of new base rates in the Company's next rate case filing.

2) The Interim Period Charge will be based on any deemed under-allocation covering the period between the end of the Test Period and the effective date of the Reset Rate. The Company will bill the Customer and recover this under collection amount as an additional charge included in the Reset Rate, within 6 months of the effective date of such Reset Rate in equal monthly payments, including a carrying charge for any deemed undercollection accrued on a monthly basis equal to the then-current customer deposit rate.

3) Any revenues collected from the Customer due to the Deemed Under-Collection, including the Reset Rate and the Interim Period Charge will be booked to a regulatory liability and shall be returned to the Company's retail customers in the next general rate case where ratemaking treatment shall be determined by the Commission.

TAX ADJUSTMENT: Billings under this Rider may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the Company and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

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LIMITATION OF RATE: Electric service under this Schedule shall not be resold or shared with others.

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## EXHIBIT I

## CTP Offset Principles for SSC Storage Resources

**1.** If the Company proposes, and the NMPRC subsequently approves, a different allocation methodology for production related costs for all retail classes in a future rate case application that affects the calculation of the Production Revenue Requirement and the Production Revenue Requirement Offset, the Parties will negotiate a new approach to replace Exhibit D-1 and to calculate the Contribution To Production Component included in the Special Service Rate and PNM Rider No. 49 – Production Cost Allocation Rider. The Parties also agree to request NMPRC approval of an addendum to the then-effective SSC, to incorporate the new approach.

**2.** The Parties commit to require the resource owner to document the performance of the SSC Storage Resources at the beginning of each calendar year, no later than January 31$^{st}$, to demonstrate that the storage resource is functioning at a certified rated capacity. The true-up analysis conducted in accordance with PNM Rider No. 49 – Production Cost Allocation Rider, shall, if needed, be adjusted for any change to the physical rated capacity of the SSC Storage Resource.

Comparison of Second Amended and Restated Special Service Contract between Public Service Company of New Mexico and Greater Kudo, LLC and Third Amended and Restated Special Service Contract between Public Service Company of New Mexico and Greater Kudo, LLC.

# PNM Exhibit JCA-3

Is contained in the following 70 pages.

~~EXECUTION VERSION~~

# ~~SECOND~~THIRD AMENDED AND RESTATED SPECIAL SERVICE CONTRACT

**between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**GREATER KUDU LLC~~.~~**

Dated as of ~~August 21, 2018~~June __, 2025

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~~**SECOND**~~I. CTP Offset Principles for SSC Storage Resources

# THIRD AMENDED AND RESTATED SPECIAL SERVICE CONTRACT

This ~~Second~~Third Amended and Restated Special Service Contract ("**Contract**"), entered into this ~~21st~~ __ day of ~~August, 2018~~June, 2025 ("**Execution Date**"), is by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Company**") and Greater Kudu LLC, a Delaware limited liability company ("**Customer**") and amends the Second Amended and Restated Special Service Contract dated ~~November 16, 2016 ("**First**~~August 21, 2018 ("**Second Amended Contract**"), between PNM and Customer. PNM and Customer may be referred to in this Contract individually as a "Party" and collectively as the "Parties."

## RECITALS

This Contract is made with reference to the following facts, among others:

A. PNM is a public utility that owns and operates electric generation, transmission and distribution facilities and is subject to the laws of the State of New Mexico and the jurisdiction of the New Mexico Public Regulation Commission ("**NMPRC**").

B. PNM and Facebook, Inc., nka Meta Platforms, Inc., Customer's parent corporation ("**Facebook**"), entered into a Special Service Contract effective July 9, 2016 ("**Original Contract**"), which sets forth Facebook's intent to develop, construct, own and operate a data center, employing the best available energy efficiency technology and equipment, on a phased basis and, at its sole cost and expense, consisting of one or more facilities to be located at a site within PNM's service territory ("**Data Center**").

C. The Original Contract also sets forth PNM's agreement to provide electric supply service to the Data Center primarily through a blend of renewable resources as the load at the Data Center increases over time, which will require procurement by PNM of energy and capacity from Renewable Energy Facilities at Customer's sole cost and expense.

D. The NMPRC issued a final order approving the Original Contract on August 17, 2016, in the Matter of the Application of Public Service Company of New Mexico for Expedited Approval of Power Purchase Agreements, Special Service Rate and Special Service Contract, New Green Energy Rider, Exemption from Energy Efficiency Rider, Variances from 17.1.210.12(B) and PNM Rule No. 4, ¶ C and for Other Related Regulatory Approvals**,** Case No. 16-00191-UT.

E. PNM and Facebook entered into the First Amended Contract to, among other things, reflect certain amendments and corrections to the Original Contract made during the hearing in Case No. 16-000191-UT and update the Customer Charge and Transmission Demand Charge approved by the NMPRC in Case No. 16-00276-UT. Facebook subsequently assigned the First Amended Contract to Customer pursuant to **Section 14.1** of the First Amended Contract on December 5, 2017, and as amended on December 7, 2017.

F. PNM and Customer entered into the Second Amended Contract to, among other things, remove the maximum load limit and change the contribution to production cost element to

a demand charge and modify this component to no longer be fixed in nature.

G. The NMPRC issued a final order approving the Second Amended Contract on October 17, 2018, in the Matter of Public Service Company of New Mexico's Application for Approval of an Amended Special Service Contract with Greater Kudu LLC, Two Purchased Power Agreements Pursuant to 17.9.551 NMAC, Original Rider No. 49, Amended Rate No. 36B and Amended Rider No. 47, Case No. 18-00269-UT.

~~F.~~H. Customer desires to ~~satisfy its commitment to procure the equivalent of~~meet one hundred percent (100%) of Customer's annual need for electric energy for the Data Center from clean and renewable energy resources to be owned by PNM or acquired by PNM under one or more power purchase agreements having fixed terms and conditions, the cost of which, in either case, will be recovered from Customer as provided in the Green Energy Rider as defined in this Contract.

I. The Parties agree that the addition of SSC Storage Resources provides benefits to the PNM system, and agree to determine principles that properly allocate the benefits of such resource additions per the terms of this Contract.

~~G.~~J. PNM desires to sell, and Customer desires to purchase, on the terms set forth in this Contract, all electric capacity and energy required to meet the electric utility service requirements of the Data Center.

~~H.~~K. In order to provide electric service to the Data Center to meet Customer's load requirements, ~~an extension~~additional extensions of PNM's electric system ~~will~~may be required from time to time.

~~I.~~L. PNM and Customer intend that this Contract and all of the PNM tariffs described in this Contract will allow PNM to recover its reasonable costs of providing electric service to Customer for the Data Center in a manner that results in No Net Adverse Impact (as defined in this Contract~~) to any other PNM retail electric service customers.~~).

~~J.~~M. PNM's charges for electric service to Customer under this Contract will consist of Rate 36B--Special Service Rate, Rider No. 47--Green Energy Rider, Rider No. 49--Production Cost Allocation Rider, and other applicable rate riders, all as described in **Section 5**.

~~K. Customer has requested that PNM procure additional renewable resources in excess of the amount necessary to serve an average hourly load at the Data Center of one hundred ten (110) MWs.~~

~~L.~~N. ~~Consistent with their obligations under **Section 3.1.2** of the First Amended Contract, the~~The Parties ~~have engaged in good faith negotiations and~~ now desire to amend and restate the ~~First~~Second Amended Contract as necessary to accommodate Customer's request and to reflect certain ~~other~~ changes agreed to by the Parties as set forth in this Contract.

**AGREEMENT**

In consideration of the premises and mutual covenants contained in this Contract, the Parties, intending to be bound, hereby agree as follows:

## 1. DEFINITIONS

1.1 As used in this Contract, the following terms, when initially capitalized, shall have the following meanings:

"**Additional Renewable Energy Procurements**" means, subject to the procedures set forth in **Section 3.1.2**, procurements of Renewable Energy resources and/or Alternative Capacity Projects other than the Initial Solar Facilities PPAs, pursuant to PPAs, ESAs, Third Party PPAs, Third Party ESAs, or other procurements by PNM agreed upon by Customer and PNM.

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

"**Alternative Capacity Project**" means, subject to the procedures set forth in **Section 3.1.2**, any project that can provide capacity to serve the Customer's needs~~, including but not limited to, energy storage~~.

"**Applicable Laws**" means, in relation to any person, entity, transaction or event, all ~~constitutions~~federal, state, provincial, local or municipal laws, statutes, codes, acts, treaties, ~~laws,~~ ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, ~~interpretations~~governmental approvals, licenses, permits, ~~judgments, decrees, injunctions, writs~~directives, and ~~orders~~requirements of ~~any~~ all regulatory and other Governmental Authorities, by which such person or entity is bound or having application to the transaction or event in question.

"**Balancing Area Authority** ~~that apply to either or both of the Parties or~~ " has the ~~terms of this Contract~~meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankrupt**" means, with respect to a Party:

(a) The Party makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated as bankrupt or insolvent; files a petition or answer seeking for the Party any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; the Party files any answer admitting or not contesting the material allegations of a petition filed against the Party (as applicable) in any such proceeding; or the Party seeks, consents to, or acquiesces in, the appointment of any trustee, receiver, custodian, or liquidator of the Party or of all or any substantial part of the

Party's properties; or the Party's directors, or shareholders take action to dissolve or liquidate the Party; or

(b) Involuntary petitions in bankruptcy are brought against the Party or an answer proposing the adjudication of the Party as a debtor or bankrupt or proposing the Party's liquidation or reorganization pursuant to any applicable bankruptcy law is filed in any court and the Party consents to or acquiesces in the filing thereof or such petition or answer is not dismissed within sixty (60) days after the filing thereof.

"**Business Day**" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, a holiday in the State of New Mexico, or the Friday following Thanksgiving. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time.

**"CAISO"** means the California Independent System Operator.

**"Capacity Agreement"** means an agreement regarding Alternative Capacity Projects that is not an ESA.

**"Claiming Jurisdiction"** means California, Washington, and any jurisdiction or balancing authority area that will claim or purport to claim for the importer, recipient, or jurisdiction, through compliance mechanisms or otherwise, the Carbon or greenhouse gas characteristics or any other Environmental Attributes of the energy or capacity delivered into such jurisdiction or balancing authority area, or create a circumstance that could lead to any of (i) the retirement of Renewable Energy Certificates in whole or in part, (ii) claims to Environmental Attributes, (iii) questions as to why the Renewable Energy Certificates were not retired in whole or in part by the delivery, for example in the nature of the Oregon Department of Energy's June 23, 2017, request for stakeholder comment; (iv) questions as to why Customer's Environmental Claims were not affected by such delivery or (v) any of the circumstances set forth in item (iv) in the definition of Deemed Delivery.

"**Confidential Information**" has the meaning set forth in **Section 15.1**.

"**Contract**" has the meaning set forth in the preamble, including any exhibits and attachments thereto, as each may be amended from time to time.

"**Contribution to Production Component**" has the meaning set forth in **Exhibit ~~D2~~D1, Section C.**

**"Cost-Based Allocated Revenue Requirement"** means the amount of functionalized revenue requirement allocated to any specific rate class as determined through a cost of service study as accepted by the NMPRC in a rate case, which may differ from the Test Period Revenue or actual realized revenue for the rate class based on rates approved by the NMPRC.

"**Customer**" has the meaning set forth in the Preamble.

"**Customer Event(s) of Default**" has the meaning set forth in **Section 9.1**.

"**Customer Indemnitee**" has the meaning set forth in **Section 13.2**.

"**Data Center**" means the facility described in **Recital B.**

**"Deemed Delivery"** means (i) "direct delivery of electricity" from an SSC Resource as that term is used in California's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 et seq.) in the case of California as a Claiming Jurisdiction, as that term is used in Washington's regulation for Reporting of Greenhouse Gases (W.A.C. ch. 173-441) in the case of Washington as a Claiming Jurisdiction, or the analogous term under any other Claiming Jurisdiction's greenhouse gas reporting or cap-and-trade regulations pursuant to which deliveries of electricity are assigned to, attributed to, or designated as being from a specified generator in the case of any other Claiming Jurisdiction, (ii) delivery or scheduling of electricity or capacity from an SSC Resource is eligible for a greenhouse gas award or allowance through submission of a greenhouse gas bid (or comparable action), (iii) a Claiming Jurisdiction can otherwise claim or purport to claim for the importer, recipient, or jurisdiction, through compliance mechanisms or otherwise, the Renewable Energy Attributes or any other carbon or greenhouse gas characteristics of the SSC Resource's energy or capacity delivered into such Claiming Jurisdiction; or (iv) the delivery to the Claiming Jurisdiction will lead to or create a circumstance that could lead to any of (A) the retirement of SSC Resource RECs, the reduction of the number of SSC Resource RECs retired on Customer's behalf, or interference with or contravention of Customer's exclusive rights to make the claims related to the Renewable Energy Attributes, (B) claims to Renewable Energy Attributes, or (C) impairments of Renewable Energy Attributes by the initiation of a proceeding before any state or federal securities, utility, environmental, energy, or transportation regulator the subject of which relates to retirement of Renewable Energy Attributes due to the report of delivery of electricity, for example in the nature of the Oregon Department of Energy's June 23, 2017, request for stakeholder comment. The mere physical flow of energy to a Claiming Jurisdiction absent (i), (ii) (iii) or (iv) does not constitute a Deemed Delivery.

"**Early Termination Payment**" has the meaning set forth in **Section 9.6.**

"**EDAM**" means the CAISO extended day-ahead market.

"**Effective Date**" means the date on which NMPRC Approval is obtained.

**"EIM"** means the CAISO energy imbalance market.

"**Equitable Defense**" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

**"ESA"** means energy storage agreement.

"**Event of Default**" means a Customer Event of Default or a PNM Event of Default.

**"Excess Energy"** means energy delivered to PNM's system from the SSC Resources that

exceeds, on an hourly basis, the sum of (i) Customer's load at the Data Center and (ii) the energy charging SSC Storage Resources; including discharging SSC Storage Resources that does not serve Customer's load at the Data Center and excluding discharging energy from SSC Storage Resources that does serve Customer's load at the Data Center.

"**Excess Energy Production Credit**" means Excess Energy for the hour times the power price index, for the hour, to which the Parties may mutually agree in writing from time to time, *provided that* to the extent the seller in any SSC Resource Procurement agrees to bear the risk of any negative pricing or Excess Energy, then the Excess Energy Production Credit as it relates to Excess Energy from the applicable SSC Resource shall be adjusted to credit to Customer the allocation to the seller of such risk as agreed to in the applicable SSC Resource Procurement.

"**Execution Date**" has the meaning set forth in the preamble.

"**Facebook**" has the meaning set forth in the Recitals.

"**FERC**" means the Federal Energy Regulatory Commission or its successor agency.

"**First Amended Contract**" has the meaning set forth in the Preamble.

"**Governmental Authority**" means:

(a) Any federal, state, local, municipal or other governmental entity;

(b) Any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power (including the North American Electric Reliability Corporation); or

(c) Any court or governmental tribunal, or any quasi-governmental or self-regulatory body, agency; provided, however, that "Governmental Authority" shall not include either Party.

"**Green Energy Rate**" has the meaning set forth in **Section 5.1.1**.

"**Green Energy Rider**" has the meaning set forth in **Section 5.1**.

"**Initial Solar Facilities PPA**" has the meaning set forth in **Section 3.1.1**.

"**Losses**" means, with respect to any Party, any and all liabilities (including but not limited to liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages, penalties, claims, actions, suits, judgments, costs, expenses and disbursements (including reasonable legal fees and expenses), and whether arising in equity, at common law, or by statute, or under the law of contracts, torts or property, of whatsoever kind and nature, including without limitation claims for property damage, and personal injury.

"**Market Cap**" has the meaning set forth in **Section 14.1**.

"**Market Operator**" means the operator of the Balancing Authority Area or any other entity performing the market operator function for the Balancing Authority Area or any organized day-ahead or intra-hour market for a region that includes PNM's system.

"**MW**" means a megawatt (or 1,000 kilowatts) of electric energy generating capacity or demand.

"**MWh**" means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.

"**NERC**" means the North American Electric Reliability Corporation or any successor organization.

"**New Mexico Public Regulation Commission**" or "**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in **Section 2**.

"**No Net Adverse Impact**" means that, on balance, this Contract and the PNM tariffs described herein result in a neutral or positive impact on rates ~~and service~~ for PNM's other retail electric service customers considering all relevant benefits generated and burdens created by this Contract and those PNM tariffs, as determined pursuant to **Section 5.1.2** of this Contract.

"**Notice**" means notices, requests, statements, invoices, or payments provided in accordance with **Section 17** and **Exhibit G**.

~~**"Original Contribution to Production Component"** has the meaning set forth in **Exhibit D1, Section C.**~~

~~"**Original Special Service Rate Period**" has the meaning set forth in **Section 5.2.1**.~~

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Person**" means any individual, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**PNM Event(s) of Default**" has the meaning set forth in **Section 9.3**.

"**PNM Indemnitee**" has the meaning set forth in **Section 13.1**.

"**PPA**" means a power purchase agreement.

"**Production Cost Allocation Rider**" has the meaning set forth in **Section 5.3**.

"**Production Revenue Requirement**" is the PNM filed Test Period Revenue associated with production-related costs included in the Company's cost of service study in the corresponding rate case filing as accepted by the NMPRC, in accordance with the formula provided in Exhibit D1, ¶ (C).

"**Production Revenue Requirement Offset**" is defined in Exhibits D1.

**"Production Revenue Requirement Offset Subsidy"** means the greater of (a) $0 or (b) as each are determined only during each general rate proceeding, (i) the Production Revenue Requirement Offset minus (ii) The Production Revenue Requirement.

"**Promotional Materials**" has the meaning set forth in **Section 15.7.2**.

"**Records**" has the meaning set forth in **Article 26**.

~~"**Regulatory End Date**" has the meaning set forth in Section 9.5.2.~~**"Regional Market"** means a regional market entity that, to enable PNM's participation, would require PNM to definitively relinquish control and responsibility for implementation of NERC BAL-001 standards and any successor reliability standard, or otherwise uses pricing mechanisms to determine individual generating unit dispatch; provided that a Regional Market does not include CAISO's EIM or EDAM, Southwest Power Pool's Markets+ or other voluntary day-ahead market within the Western Interconnection whereby participants are not required to include all energy and capacity resources on their system in order to participate in such market.

"**Reliability Curtailment**" is defined in **Section 8.1.1**.

"**Renewable Energy**" means electrical energy generated from a source that (i) is not fossil carbon-based and (ii) constantly renews itself or that is regarded as practically inexhaustible, which may include without limitation solar, wind, or geothermal technologies.

"**Renewable Energy Act**" means NMSA 1978, ~~Chapter~~Sections 62~~, Article~~ -16-1 to -10.

"**Renewable Energy Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Renewable Energy Facilities' generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, emission rate credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Renewable Energy. ~~Environmental~~Renewable Energy Attributes include those currently existing or arising during the

Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change (UNFCCC) and related Kyoto Protocol or other programs, laws or regulations. ~~Environmental Attributes include the reporting rights related to~~Renewable Energy Attributes include all Environmental Attributes and Future Environmental Attributes for any SSC Resource as defined in the applicable Third Party PPA or Third Party ESA, as well as the exclusive right to report the ownership of any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances to any other Person, including ~~the right of a Person to report the ownership thereof~~ in compliance with federal or state law~~,~~ if applicable~~, or otherwise to a federal or state agency or any other Person. Environmental~~. Renewable Energy Attributes specifically exclude (i) Tax Credits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Renewable Energy Facilities, and (iii) any energy, capacity, reliability or other power attributes from the Renewable Energy Facilities.

"**Renewable Energy Certificate**" or "**REC**" means a document evidencing that the enumerated renewable energy kilowatt hours have been generated from a Renewable Energy Facility and certified as such by WREGIS in accordance with the Renewable Energy Act. For purposes of this Contract, including PNM's obligations under **Section 3.2**, the RECs shall be accumulated on a MWh basis with one (1) REC for each MWh of Renewable Energy generated. For purposes of this Contract, RECs include all Renewable Energy Attributes associated with the generated energy. "Renewable Energy Certificate" or "REC" excludes (i) any local, state or federal investment tax credit, production tax credit, depreciation deductions or other tax benefit ~~to Seller~~ based on ownership of, or wholesale market sale of energy production from~~, any portion of~~ the Renewable Energy Facilities, including the Tax Credits, and (ii) depreciation and other tax benefits arising from ownership or operation of the Renewable Energy Facilities unrelated to its status as a generator of renewable or environmentally clean energy.

"**Renewable Energy Facilities**" means the Solar Facilities and any other facilities for producing Renewable Energy, whether developed by PNM or a third party.

"**Renewable Portfolio Standard**" means the requirements set forth in the Renewable Energy Act, and implementing regulations (including NMPRC Rule 17.9.572 NMAC), as either may be amended from time to time.

"**Replacement RECs**" means RECs sourced by PNM from the market or its own portfolio, with the same vintage year as the time of the applicable curtailment, from a renewable energy project that declared commercial operation after December 31, 2019, and from resources in locations prioritized as follows: (1) New Mexico; (2) states bordering New Mexico and interconnected to the Western Electric Coordinating Council system ("WECC"); and (3) otherwise interconnected to WECC.

"**Representatives**" has the meaning set forth in **Section 11**.

~~"**Solar Facilities Site**" means the real property on which one of the Solar Facilities is, or will be located, as further described in **Section 3.1.1**.~~

"**Solar Facilities**" means the electric solar facilities as more particularly described in **Section 3.1.1**, to be constructed, owned and operated by an Affiliate of PNM at one or more Solar Facilities Sites, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at such facility.

"**Solar Facilities Site**" means the real property on which one of the Solar Facilities is, or will be located, as further described in **Section 3.1.1**.

"**Special Service Rate**" has the meaning set forth in **Section 5**.

"**SSC Energy Resource**" means an SSC Resource that is not a SSC Storage Resource.

"**SSC Resource**" means any energy generation or storage, or capacity, resource contracted with by PNM on Customer's behalf pursuant to this Contract.

"**SSC Resource Procurement**" means an Initial Solar Facilities PPA or an Additional Renewable Energy Procurement.

"**SSC Storage Resource**" means an SSC Resource that is an Alternative Capacity Project capable of being charged and discharged.

"**SSC Storage Resource Capacity Value Factor**" means the percentage applied to an SSC Storage Resource's nameplate capacity for purposes of determining the Production Revenue Requirement Offset. The value is 78% for all SSC Storage Resources filed for NMPRC approval prior to December 31, 2025 (even if not yet approved by NMPRC by this date), and this value shall endure as a fixed value for the life of each applicable ESA. For any SSC Storage Resources filed for NMPRC approval on or after December 31, 2025, the percentage applied shall (1) mutually agreed in writing by the parties as early as practicable during a procurement process as described in **Section 3**, (2~~.1.~~) be consistent with appropriate industry capacity evaluation methods for comparable storage resources, and (3) endure as a fixed value for the life of each applicable ESA. The value agreed by the Parties shall not be subject to change as part of a reconciliation utilizing Rider 49 – Production Cost Allocation Rider. The SSC Storage Resource Capacity Value Factors for all SSC Storage Resources shall be utilized in establishing Customer's rates in any general rate case after the Effective Date of this Contract.

"**System Supplied Energy**" means energy provided to Customer through ~~PNM's traditional energy sources~~other energy resources available to PNM for overall system needs during hours when energy sourced from ~~PPAs~~SSC Resources, including energy discharged from SSC Storage Resources, is not sufficient to meet the hourly energy needs of the Customer.

"**Tax Credits**" means investment tax credits under Section 48 of the U.S. Internal Revenue Code of 1986, as amended, or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from renewable energy resources of the type used to generate Renewable Energy and/or any federal, state or local investment tax credit or federal, state or local production tax credit determined by reference to renewable electric

energy produced from renewable energy resources in effect in the State of New Mexico.

"**Term**" has the meaning used in **Section 4**.

"**Test Period Revenue**" means the amount of revenue that is forecast to be collected from each rate class at NMPRC-approved rates, which may differ from the Cost-Based Allocated Revenue Requirement for that rate class.

"**Third Party PPA**" has the meaning used in **Section 3.1.2**.

"**Third Party ESA**" has the meaning used in **Section 3.1.2**.

"**Transmission Revenue Requirement**" is the NMPRC-approved Test Period Revenue associated with transmission related costs included in the Company's cost of service study in the corresponding rate case filing.

"**Uncontrollable Forces**" means any cause beyond the reasonable control of the Party affected and not due to its fault or negligence, including, but not limited to, acts of God, flood, earthquake, storm, fire, lightning, epidemic, war, terrorist activity, riot, civil disturbance, sabotage, inability to obtain permits, licenses, and authorizations from any Governmental Authority for any of the materials, supplies, equipment, or services required to be provided hereunder, fuel shortages, breakdown or damage to generation and transmission facilities belonging to PNM or any of its Affiliates, failure of facilities, strikes or other labor disputes, or restraint by court or Governmental Authority, any of which by exercise of due foresight such Party could not reasonably have been expected to avoid, and which by the exercise of due diligence it is unable to overcome. Uncontrollable Force also includes Force Majeure Event under the ~~Initial Solar Facilities PPAs or any PPA or other contractual arrangement for Additional Renewable Energy Procurements.~~ applicable SSC Resource Procurement. Under no circumstances shall the following constitute an Uncontrollable Force: (a) a Party's ability to enter into a contract at a more favorable price or under more favorable conditions or other economic reasons, or (b) delays or nonperformance by suppliers, vendors or other third parties with whom a Party has contracted, except to the extent that such delays or nonperformance were due to circumstances that would constitute Uncontrollable Forces. The term "Uncontrollable Forces" does not include outages to the extent such are not caused or exacerbated by an Uncontrollable Force.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking and reporting system adopted for purposes of the Renewable Portfolio Standard.

1.2 Rules of Construction. Unless the context of this Contract otherwise clearly requires, (i) references to the plural include the singular, (ii) references to the singular include the plural, (iii) references to one gender include the other gender, (iv) the terms "include," "including" and similar terms are not limiting and have the inclusive meaning represented by the phrase "including without limitation," (v) the term "or" is not exclusive, (vi) the terms "hereof," "herein," "hereunder," "hereto" and similar terms in this Contract refer to this Contract as a whole and not to any particular provision of this Contract, (vii) the terms "day" and "days" mean and refer to

calendar day(s) and (viii) all references to "dollars" or "$" shall mean U.S. dollars. Unless otherwise set forth herein, references in this Contract to (i) any document, instrument or agreement (including this Contract) (A) include and incorporate all exhibits, schedules, disclosure schedules and other attachments thereto, (B) include all documents, instruments or agreements issued or executed in replacement thereof and (C) mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time, and (ii) a particular law, regulation or ordinance means such law, regulation or ordinance as amended, modified, supplemented or succeeded, from time to time and in effect at any given time and all rules and regulations promulgated thereunder, unless the context requires otherwise. All Article, Section, Exhibit and Schedule references herein are to Articles, Sections, Exhibits and Schedules of this Contract, unless otherwise specified.

## 2. CONDITIONS PRECEDENT

Except as otherwise set forth herein, the obligations of the Parties under this Contract are subject to NMPRC Approval. ~~-~~NMPRC Approval shall be considered received when the NMPRC issues a final written order that is not contested or is no longer subject to appeal or further proceedings on remand and either (i) approves this Contract, the Production Cost Allocation Rider, any requested changes to the Special Service Rate and the Green Energy Rider, and any requested variances; or (ii) approves any of the items in (i) in part or subject to conditions or substantial modifications, *provided*, that each of Customer and PNM agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as set forth in **Section 6.2** (collectively, "**NMPRC Approval**"). ~~For the avoidance of doubt, the~~The terms and conditions of the ~~First~~Second Amended Contract shall continue to apply until NMPRC Approval of this Contract is received.

## 3. PNM'S PROCUREMENT OF RENEWABLE RESOURCES FOR DIRECT ASSIGNMENT TO CUSTOMER'S DATA CENTER

3.1 Procurement of Renewable Resources. At Customer's direction and discretion, PNM shall procure from Renewable Energy Facilities or Alternative Capacity Projects capacity and energy to meet Customer's load at the Data Center by securing Additional Renewable Energy Procurements at reasonable cost and on terms mutually acceptable to both PNM and Customer, the costs of which shall be directly assigned to serve Customer's load, subject to NMPRC approval. PNM and Customer shall in good faith use commercially reasonable efforts to cooperate in the timely procurement of such energy and capacity and shall consider the optimal blend of ~~renewable~~ resources as determined by PNM and Customer under **Section 3.1.3** below.

3.1.1 Initial Solar Procurement. ~~-~~As of ~~the Effective Date~~August 21, 2018, PNM ~~has~~ procured a total of thirty (30) $MW_{AC}$ of capacity and energy from Solar Facilities in PNM's service area to meet Customer's load at the Data Center by entering into three twenty-five (25) year PPAs with a PNM Affiliate (each, an "**Initial Solar Facilities PPA**"), consistent with the requirements of **Section 3.1** and **Section 6.1** of the Original Contract and approved in Case No. 16-00191-UT. No initial Solar Facility had capacity greater than twenty (20) MW. Customer had the right to review the siting of the Solar Facilities to be

developed pursuant to the Initial Solar Facilities PPAs.

3.1.2 Additional Renewable Energy Procurements. Upon Customer's Notice to PNM, PNM and Customer will identify and evaluate the costs and benefits of Additional Renewable Energy Procurements to provide the capacity and energy required to serve the Data Center's projected load in excess of what is provided under the Initial Solar Facilities PPAs and agree on any Additional Renewable Energy Procurements, through ~~either a PPA~~a PPA, ESA, other contractual arrangement, or PNM ownership consistent with the requirements in **Section 3.1** and subject to NMPRC approval. Such Additional Renewable Energy Procurements shall be limited to the additional projected annual energy consumption of the Data Center. If the Parties agree on an Additional Renewable Energy Procurement by PPA or ESA, terms of ~~the PPA~~such agreement that are substantially similar to those of the third party PPAs or ESAs attached hereto as **Exhibit B** ~~("~~(respectively, "**Third Party PPAs**" and **"Third Party ESAs**") shall be deemed acceptable, and PNM shall, at Customer's request, enter into such additional PPA or ESA, as applicable, the costs of which shall be directly assigned to Customer, and submit it for approval to the NMPRC. Notwithstanding anything to the contrary in this Contract, (a) PNM will not be required to incur any unreasonable costs in the process of negotiating, entering into, or seeking regulatory approval of, any Additional Renewable Energy Procurement; (b) PNM shall have authority to approve any Additional Renewable Energy Procurement, which approval shall not be unreasonably withheld; and (c) Additional Renewable Energy Procurements shall result in No Net Adverse Impact as defined in this Contract.

3.1.3 Procurement Process. PNM and Customer will work collaboratively, expeditiously and in good faith to complete the following actions during the period beginning on the date Customer provides Notice to PNM under **Section 3.1** of this Contract and ending nine (9) months later, or such other period determined by mutual agreement of the Parties: (a) within one (1) month, identify the additional ~~Renewable Energy resource~~SSC Resources required, taking into account the optimal blend of renewable resources to serve the Data Center's incremental load that minimizes the generation cost allocation to Customer for purposes of setting the Special Service Rate; (b) within three (3) months, complete a request for proposals or other appropriate process for selecting the providers of the additional ~~Renewable Energy resource~~SSC Resources; (c) within six (6) months, enter into and complete negotiations for the ~~Additional Renewable Energy~~SSC Resource Procurement; (d) within eight (8) months, develop a schedule for construction and a target in-service date for additional ~~Renewable Energy Facilities~~SSC Resources and make appropriate regulatory filings relating to the ~~Additional Renewable Energy Procurement~~SSC Resource Procurements; and (e) within nine (9) months, obtain all necessary permits and approvals to complete the ~~Additional Renewable Energy Procurement~~SSC Resource Procurements or, if applicable, commence construction of the additional Renewable Energy Facilities. Notwithstanding the foregoing objectives, if PNM is unable to complete the tasks and activities specified within subsections (d) and (e) in this **Section 3.1.3** only, and such delay is due to the failure to receive final interconnection or transmission studies or other approvals that are required for PNM to complete such objectives, then the deadline for the tasks and activities specified above in subsections (d)

and (e) only shall be automatically extended on a day-for-day basis (i.e., one day for each day PNM is unable to achieve such objectives). PNM shall not be entitled to an extension, however, for any delay that is within PNM's reasonable control or is otherwise caused by PNM or its Affiliates' own delay or breach of contractual arrangements with one or more third parties.

3.1.4 Siting of Additional Renewable Energy Procurements. PNM and Customer will work collaboratively, expeditiously and in good faith to site the renewable energy resources for ~~Additional Renewable Energy~~SSC Resource Procurements in locations that will avoid constraints on PNM's transmission system.

3.2 RECs; WREGIS Registration. All RECs attributable to energy generated for Customer under the ~~Initial Solar Facilities PPAs and any Additional Renewable Energy Procurement~~SSC Resource Procurements shall be registered with WREGIS and solely dedicated to Customer's account. For Customer's usage at the Data Center that exceeds the energy actually supplied under the ~~Initial Solar Facilities PPAs and any Additional Renewable Energy Procurement~~SSC Resource Procurements, PNM shall procure, at Customer's discretion and sole expense and on a least-cost basis, an amount of RECs equal to such usage; at Customer's request, PNM shall procure such RECs from Renewable Energy Facilities with characteristics as similar as possible to those supplying RECs under the ~~Initial Solar Facilities PPAs and any Additional Renewable Energy Procurement (*e.g.*,~~SSC Resource Procurements (*e.g.*, by resource and location). PNM shall transfer all RECs procured to Customer's WREGIS account in accordance with applicable WREGIS rules and requirements. Upon request by Customer, PNM shall retain the RECs in PNM's WREGIS account and retire them on Customer's behalf in accordance with applicable WREGIS rules and requirements. All RECs, including Renewable Energy Attributes, associated with energy supplied to Customer shall be solely dedicated to Customer. Without limiting the foregoing, none of the RECs, whether retired by Customer or by PNM, shall be used for Renewable Portfolio Standard compliance by any utility, including PNM. Customer will be responsible for the cost of registration, retirement and, if required, transfer of the RECs in WREGIS, all of which costs are separate from the billing rates set forth in this Contract.

3.3 Electric Facilities. Transmission system upgrades ~~will~~may, from time to time, be required to provide electric service to meet Customer load, the costs of which that are directly attributable to upgrades that can only be used by Customer shall be recovered by PNM through direct reimbursement by Customer under ~~a~~ separate Electric Facilities Agreement(s) or Reimbursement Agreement(s) between Customer and PNM. ~~Other transmission facility upgrades to PNM's transmission system that may be required to serve additional Customer load, and associated costs, shall be addressed in separate electric facilities agreements between PNM and Customer.~~

## 4. TERM

This Contract shall be in full force and effect, enforceable and binding in all respects, upon the Effective Date. The term of this Contract shall commence upon the Effective Date and shall end upon the latest occurrence of termination under an ~~Initial Solar Facilities PPA or any Additional Renewable Energy~~SSC Resource Procurement then in effect ("**Term**"), subject to

NMPRC approval to the extent required by **Section 6** and early termination provisions as set forth in this Contract. ~~Notwithstanding the foregoing, the Parties agree that **Section 9.5.2**, NMPRC Approval, shall become effective and shall be in full force and effect as of the Execution Date.~~ Except as otherwise agreed between the Parties, this Contract is not subject to extension or renewal and shall automatically terminate at the end of the Term.

## 5. BILLING RATES

Monthly charges for electric service by PNM to Customer under this Contract will include: PNM Rate No. 36B - Special Service Rate—Renewable Energy Resources ("**Special Service Rate**"), PNM Rider No. 47 – Green Energy Rider, PNM Rider No. 49 – Production Cost Allocation Rider, and other applicable riders, as set forth in this **Section 5**. Except for the terms and conditions in this Contract and the Green Energy Rate, all rates and charges applicable to Customer shall be subject to adjustment in PNM general rate cases; provided that rates charged under applicable riders shall be adjusted in accordance with the terms of those riders, and the fuel factor shall be adjusted as described in PNM Rate Rider No. 23 at the same time as Rate Rider No. 23 is adjusted.

5.1 Green Energy Rider. The green energy rider~~-~~ attached to this Contract as **Exhibit C** allows PNM to enter into this Contract with Customer to procure ~~renewable~~ energy resources ~~equivalent~~ to ~~up to one hundred percent (100%) of~~meet Customer's need for electric energy, including procurements to satisfy Customer's sustainability goals, as its load grows over time, and provide the other services necessary to satisfy Customer's estimated peak capacity and energy requirements, on an annual basis, and recover all of the reasonable costs of providing those services to Customer so that this Contract will have No Net Adverse Impact ~~on any other PNM retail service customers~~ as the term No Net Adverse Impact is defined in this Contract ("**Green Energy Rider**").

5.1.1 The rate under the Green Energy Rider is comprised of a pass-through to Customer of the cost of the ~~Initial Solar Facilities PPAs and the cost of any Additional Renewable Energy Procurement~~SSC Resource Procurements for Customer executed pursuant to this Contract (collectively, "**Green Energy Rate**").

5.1.1.1 The Green Energy Rate shall be designed to allow PNM to recover from Customer the reasonably incurred costs of the ~~Initial Solar Facilities PPAs and the Additional Renewable Energy~~SSC Resource Procurements, in accordance with the provisions set forth in the Green Energy Rider. Such costs shall not include those associated with interest charges, penalties, payments, or other costs incurred by PNM due to its failure to comply with the terms of any ~~PPA~~SSC Resource Procurement, which failure was not caused by Customer. The Green Energy Rate also shall be designed to pass through to Customer the value of any incentives, grants, credits and other benefits obtained by PNM under any ~~PPA~~SSC Resource Procurement.

5.1.1.2 The Green Energy Rider shall provide that Customer's Special Service Rate shall be designed in a manner that takes into account the capacity contribution of the ~~Solar Facilities procured by the Initial Solar Facilities PPAs and Renewable Energy Facilities and Alternative Capacity Projects procured under any~~

~~Additional Renewable Energy Procurements~~SSC Resources to PNM's system and the value of energy actually produced or discharged on an hourly basis by those ~~Renewable Energy Facilities~~SSC Resources to PNM's system that exceeds Customer's energy demand~~. With respect to such excess~~ and SSC Resources energy~~,~~ storage capability by providing that PNM shall credit Customer ~~in an amount equal to (a) the sum of the amount of energy produced by the Renewable Energy Facilities in excess of the amount consumed by the Customer in each hour of the billing period multiplied by (b) the energy only market price at the Palo Verde hub in those hours, *provided that* to the extent the counterparty to any PPA agrees to bear the risk of any negative pricing or excess generation, then the minimum value to be credited Customer as calculated pursuant to this **Section 5.1.1.2(b)** shall reflect the allocation of such risk as agreed to in the applicable PPA.~~the Excess Energy Production Credit for all Excess Energy.

5.1.1.3 In the event of a delay or failure of ~~a Renewable Energy Facility or Alternative Capacity Project~~an SSC Resource supplying energy, capacity or RECs under an ~~Initial Solar Facilities PPA or an Additional Renewable Energy~~SSC Resource Procurement, the Green Energy Rider shall ensure that the cost to supply Customer's load and the equivalent amount of RECs from alternative sources is offset by the amount of proceeds of any liquidated damages payments, credit support or other compensation actually received by PNM under such ~~PPA.~~SSC Resource Procurement.

5.1.1.4 In the event of a conflict or contradiction between the terms of this Contract and the Special Service Rate, Green Energy Rider or the Green Energy Rate, the terms of this Contract shall control.

5.1.2 Determination of No Net Adverse Impact. There is No Net Adverse Impact if the Test Period Revenue projected from Customer during the Company's Test Period equals or exceeds (a) the separate class Cost-Based Allocated Revenue Requirement Company is required to undertake for each Rate 36B customer in each general rate proceeding minus (b) the Production Revenue Requirement Offset Subsidy.

5.2 Special Service Rate Schedule.

5.2.1 Customer will be billed for certain charges through the Special Service Rate, set forth in **Exhibit ~~D~~, ~~which rate schedule will be subject to NMPRC approval. **Exhibit D1** will apply during the period from the Effective Date of this Contract until the effective date of a new Special Service Rate approved in the next PNM general rate case after the Effective Date ("**Original Special Service Rate Period**"); upon establishment of a new Special Service Rate following the Original Special Service Rate Period, **Exhibit D2** will replace **Exhibit D1** in its entirety. Service under the Special Service Rate shall commence on the commercial operation date of the Data Center and will be subject to adjustment as set forth in this Contract.~~**D1**.

5.2.1.1 Charges under the Special Service Rate will include recovery of

Customer's allocated share of customer costs, transmission costs, System Supplied Energy costs, and energy-related non-fuel costs. ~~-~~These charges will be subject to adjustment in PNM general rate cases, and the fuel factor will be adjusted as described in PNM Rate Rider No. 23 at the same time as Rate Rider No. 23 is adjusted.

5.2.1.2 [Reserved].

~~5.2.1.2~~ The ~~Charges under the Special Service Rate will also include an Original Contribution~~Parties agree to ~~Production Component of $0.0231074 per kWh of System Supplied Energy, which is fixed during the Original Special Service Rate Period. This rate reflects Customer's revenue contribution~~meet and confer to ~~PNM's production costs for capacity supplied to Customer from PNM's traditional energy sources, taking into account the additional capacity provided by the Initial Solar Facilities PPAs.~~

5.2.1.3 ~~After the Original Special Service Rate Period, the Original Contribution to Production Component established in Section 5.2.1.2 shall be superseded by a demand based Contribution to Production Component that will recover the allocated production costs. The allocated production costs shall be calculated utilizing~~amend the methodology set forth in **Exhibit ~~D2~~**. ~~This reflects Customer's revenue contribution to PNM's production costs for capacity supplied to Customer from PNM's traditional energy sources, taking into account the additional capacity provided by any Additional Renewable Energy Procurement deemed to have capacity value as determined utilizing the~~ **D1** if, in a future rate case, the NMPRC approves an alternate Production Revenue Requirement allocation methodology for all retail classes. The Parties agree to adhere to the principles set forth in **Exhibit ~~D2 during a PNM general rate case~~I** in such negotiations.

~~5.3~~ Production Cost Allocation Rider.

~~5.4~~5.3 ~~PNM shall design, prepare, and use commercially reasonable efforts to obtain NMPRC Approval of a production cost allocation rider substantially in the form attached to this Contract as~~ **Exhibit H** ("**Production Cost Allocation Rider**~~"). The sole purpose of the Production Cost Allocation Rider~~") is for PNM to recover from Customer the amount of any under-collection resulting from the reconciliation of ~~production cost allocations utilizing the methodology set forth in **Exhibit D2 Section D(4).**~~the Production Revenue Requirement Offset. When an under-collection of Customer's revenue contribution to PNM's production costs described in **Section 5.2.1.3** is deemed to have occurred, PNM shall recover through the Production Cost Allocation Rider the actual under-recovery of production costs~~ for the period from the initial setting of the contribution to production component established under **Exhibit D2** until the reconciliation outlined in **Exhibit D2 Section D(4)** is performed and the rate is reset. PNM will bill Customer the under-collected amounts, including a carrying charge at the then-current customer deposit rates, in equal amounts over no more than eighteen (18) months.~~. PNM will bill Customer the under-collected amounts each month until reset in a general rate case.

~~5.5~~5.4 Other Applicable Riders.

~~5.5.1~~5.4.1 Renewable Energy Rider.~~-~~ Rider No. 36 – Renewable Energy Rider, is applicable to Customer to the extent required under the Renewable Energy Act.

~~5.5.2~~5.4.2 Energy Efficiency Rider Inapplicable. PNM agrees that Customer is not eligible to participate in PNM's current NMPRC-approved energy efficiency programs.

~~5.5.3~~5.4.3 Other Rate Riders. Customer shall be subject to any other applicable rate riders according to their terms unless expressly excluded. Allocations to Customer under any rider recovering current or historical production costs will be based on Customer's load minus energy and capacity from the ~~Initial Solar Facilities PPAs and Additional Renewable Energy~~SSC Resource Procurements as determined in the applicable NMPRC-approved PNM tariff. PNM shall serve on Customer any application requesting NMPRC approval of any new rate rider, or changes to any existing rate rider, not including routine rider rate adjustments, that would go into effect after the Effective Date and apply to the Special Service Rate.

## 6. REGULATORY FILINGS

6.1 NMPRC and FERC Filings.

6.1.1 PNM shall timely prepare and file for submission and approval by the NMPRC an ~~Advice Notice that will allow PNM to implement the Production Cost Allocation Rider and an~~ application for approval of this Contract, amendments to the Special Service Rate, amendments to the Green Energy Rider, and any required variances.

6.1.2 PNM shall timely prepare and file for submission and acceptance by FERC, as required, Form 556, Notice of Self-Certification of a qualifying facility, and an application for acceptance of any Additional Renewable Energy Procurements, if required.

6.2 Modifications to Filings. If the NMPRC, in an order addressing any of the filings made by PNM pursuant to **Section 6.1**, modifies or eliminates a material term or condition or imposes a material new term or condition unacceptable to either Party, PNM and Customer shall renegotiate, in good faith, the relevant terms of this Contract with a view towards preserving the intended benefits and burdens of the original bargain struck between the Parties. If the Parties are unable to reach a mutually-agreeable resolution within thirty (30) days after issuance of such NMPRC order, or such other period as the Parties may determine, then either Party may terminate this Contract upon Notice to the other, subject to the Default and Termination provisions of this Contract.

## 7. BILLING AND PAYMENT

7.1 Monthly Charges. PNM shall present Customer with a single bill that contains all applicable rates, charges, taxes and fees under the Green Energy Rider and Special Service Rate,

as applicable, and Customer shall make a single monthly payment to PNM. The timing of invoicing and payment will otherwise be subject to the terms of PNM's Rules 5 through 9.

7.2 Payment Method. Customer shall pay PNM by check or electronic funds transfer, to be received by PNM pursuant to the payment terms applicable to Customer's base charges under the Special Service Rate.

7.3 Interest. Delinquent payments shall be subject to penalty pursuant to the terms of PNM's applicable rules and tariffs.

7.4 No Duplication. Neither Customer nor PNM shall be liable under this Contract to make any payment of amounts due to the other (or for which Customer or PNM has paid in advance) if and to the extent that the Party to which payment is due has otherwise actually received payment from one or more sources, provided that the amount of payments received is for the same purpose as the payments due.

~~**8. UNCONTROLLABLE FORCES**~~

**8. PHYSICAL MATTERS**

8.1 Curtailments. PNM curtailment of SSC Resources shall be pursuant to the provisions of this Contract and the Third Party PPAs. The Third Party PPAs may be amended only by the mutual written agreement of Customer and PNM. Customer and PNM agree to review and discuss performance hereunder and under the Third Party PPAs, and to identify mutually agreeable PNM practice modifications, as requested by either Party, where such request will not be unreasonably denied. PNM shall pay any compensation due to the seller under any Third Party PPA for curtailment of energy, and for any and all such curtailments, and only for such curtailments: Customer will pay to PNM the fixed price for energy and RECs in the Third Party PPA for the times of such curtailments; PNM shall bear the remaining costs, and have all of the remaining benefits thereof; and only for curtailments with respect to which PNM is obligated to pay compensation to the seller under a Third Party PPA for such curtailment, PNM will supply Replacement RECs to Customer in the quantity of the estimated energy that was not delivered on account of such compensable curtailment, at no additional cost to Customer. Customer shall receive System Supplied Energy for such curtailed periods without additional cost to Customer as if the SSC Resource had generated and delivered energy to PNM. For any such curtailment, PNM shall prudently consider use of storage resources (including SSC Storage Resources), the payments (including any payment of the fixed price for energy by Customer) and the value of any foregone RECs and the cost of any Replacement RECs as required in this Section 8.1 as a part of any decision to curtail an SSC Resource which results in PNM being required to pay compensation to Seller thereunder, just as it is obligated to prudently do so when acting on behalf of all its customers (including Customer) when curtailing non-SSC Resources.

8.1.1 Curtailments To Be Non-Discriminatory. PNM shall curtail SSC Resources, taken as a whole and consistent with safe and reliable system operations, in accordance with existing contracts and in an equitable and non-discriminatory manner.

8.1.2 Event documentation. PNM shall document each curtailment event, including the reason for the curtailment, the directed actions for each specified resources or group of resources, and the start, end, and duration of such directed actions. PNM shall provide to Customer monthly reports, on a semi-annual basis or as requested by Customer, of such curtailments. PNM shall evaluate such reports with a view towards applying the information set forth therein to ensure minimization of curtailment of SSC Resources and curtailments on a non-discriminatory basis.

8.2 Energy Deemed Deliveries.

8.2.1 PNM shall not schedule for delivery output or capacity provided to PNM from SSC Resources into any Claiming Jurisdiction, via EIM or EDAM, any energy imbalance market, resource adequacy transaction or commitment, bilateral transaction, or otherwise such that it is Deemed Delivery.

8.2.2 PNM shall not schedule for delivery output or capacity provided to PNM from an SSC Resource Procurement, outside of PNM's balancing authority area in any manner that could interfere with or contravene Customer's exclusive rights to make the claims with respect to the environmental attributes of any SSC Resource it has purchased through the SSC or reduce the number of RECs delivered to Customer by the SSC Resource (i.e., by virtue of such delivery as opposed to potential reduction of output).

8.2.3 PNM may register an SSC Resource as a "specified source of electricity" with the California Air Resources Board under California's Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (title 17, California Code of Regulations, section 95100 *et seq*.), or with another jurisdiction under that jurisdiction's greenhouse gas reporting regulations, for purposes of submitting the SSC Resource in the EIM or EDAM as a participating resource if required by the market operator, but shall not suffer a sale of energy or capacity from such SSC Resource in any manner that would cause it to clear the market as a "specified source of electricity" into a Claiming Jurisdiction.

8.2.4 If there is a change in any Applicable Law, any interpretation of Applicable Law by a Governmental Authority, or any policy of a Governmental Authority, market tariffs, rules, or procedures, or a change in interpretation of the preceding, such that any person or entity, Governmental Authority or otherwise, other than Customer is potentially able to make claims to the Customer's environmental attributes, PNM shall promptly cease offering such SSC Resource as dispatchable in the real time market and notify Customer of such change, the estimated impact, if any, and PNM's plan to remedy any claims made by the other person or entity.

8.3 Regional Markets. Formation of one or more Regional Markets and PNM's participation in a Regional Market may require review of potential impacts, and negotiation of changes to, Third Party PPAs.

8.3.1 The Parties shall engage in good faith negotiations to amend this Contract or to support changes to the Third Party PPAs to remove material impediments to PNM's participation in the Regional Market by allocating the resulting changed risks,

responsibilities and costs to reflect as closely as possible the benefits and burdens of this Contract as they existed on the date it became effective; and

8.3.2 PNM shall provide Customer with all data and information Customer may reasonably request regarding PNM's potential participation in such Regional Market, except to the extent prohibited by law or by confidentiality agreements, provided that PNM shall make reasonable efforts to obtain the right for Customer to review such data and information and grant reasonable Customer requests to delay negotiations if material data is not yet available to Customer.

8.4 Charging and Discharging SSC Storage Resources.

8.4.1 PNM shall control the charging and discharging of SSC Storage Resources for PNM system requirements, subject to the provisions of this Contract.

8.4.2 PNM shall make reasonable efforts to utilize all storage resources in a manner that alleviates curtailment of renewable resources.

8.4.3 In charging and discharging SSC Storage Resources, PNM shall abide by any warranty restrictions or other terms of the Third Party ESAs.

8.4.4 PNM and Customer have agreed on principles for determining the Contribution to Production Offset for SSC Storage Resources in **Exhibit I** that will be implemented in a subsequent amendment to this Contract following or in connection with PNM's next general rate case.

~~8.1~~8.5 Uncontrollable Forces. Neither Party will ~~be considered to~~ be in default in respect to any obligation hereunder if delays in or failure of performance is due to Uncontrollable Forces, except for the obligation to pay monies due. Neither Party, however, will be relieved of liability for failure of performance if such failure is due to removable or remediable causes which it fails to remove or remedy with reasonable dispatch. Moreover, nothing contained in this Contract will be construed to require either Party to prevent or settle a strike or other labor dispute against its will. The Party whose performance is affected by an Uncontrollable Force, including any potential curtailment of electric service, must immediately notify the other Party of all pertinent facts and take all reasonable steps to promptly and diligently prevent such causes if feasible to do so, or to minimize or eliminate the effect thereof without delay.

## 9. EVENTS OF DEFAULT: REMEDIES

9.1 Customer Events of Default. Unless otherwise provided in PNM's applicable Commission-approved tariffs, Customer will be in material default of its obligations under this Contract upon the occurrence of any one or more of the following events of default (each, a "**Customer Event of Default**"):

9.1.1 Customer becomes Bankrupt;

9.1.2 Any material representation or warranty made by Customer in this Contract

was materially false or misleading when made, and Customer fails to remedy such false or misleading representation or warranty and fails to make PNM whole for any consequences thereof within thirty (30) days after Customer receives a Notice from PNM;

9.1.3 Customer assigns or transfers this Contract or any right or interest in this Contract, except as expressly permitted under **Section 14**;

9.1.4 Customer fails to perform or observe in any respect any provision of this Contract providing for the payment of money that is owed to PNM under this Contract or any other material provision of this Contract not otherwise addressed in this **Section 9.1.4**, and such failure continues for twenty (20) days in the case of a payment obligation or thirty (30) days in the case of any other obligation, except such thirty (30) day period shall be extended if (a) curing such failure reasonably requires more than thirty (30) days, (b) Customer commences such cure within such thirty (30) day period and diligently prosecutes such cure, and (c) such cure is accomplished within seventy-five (75) days, in each case after Customer receives a Notice from PNM;

9.1.5 A guarantor fails to make, when due, any payment required or to perform any other material covenant or obligation in the guaranty, or the guaranty expires, is terminated, or is not otherwise maintained in full force and effect, prior to satisfaction of Customer's obligations under this Contract.

9.2 PNM's Rights and Remedies. In the event of an uncured Customer Event of Default, subject to **Section 10**, Limitations of Liabilities, PNM or its successors or assigns shall have the following rights and remedies, in addition to any other rights and remedies that may be available to PNM or its assignees under this Contract and Applicable Law, and Customer shall have the following obligations:

9.2.1 PNM, without prejudice to any of its other rights or remedies, may terminate this Contract by delivery of Notice to Customer; and

9.2.2 PNM may seek equitable relief to cause Customer to take action or to refrain from taking action pursuant to this Contract.

9.3 PNM Events of Default. PNM shall be immediately in default of its obligations pursuant to this Contract upon the occurrence of any one or more events of default below (each, a "**PNM Event of Default**"):

9.3.1 PNM becomes Bankrupt;

9.3.2 Any material representation or warranty made by PNM herein was materially false or misleading when made, and PNM fails to remedy such false or misleading representation or warranty and to make Customer whole for any consequences thereof within thirty (30) days after PNM receives a Notice from the Customer with respect thereto;

9.3.3 PNM assigns or transfers this Contract or any right or interest herein, except as expressly permitted under **Section 14**; or

9.3.4 PNM fails to perform or observe in any respect any provision of this Contract providing for the payment of money that is owed to Customer under the terms of this Contract (other than payments of money subject to good faith disputes) or any other material provision of this Contract not otherwise addressed in this **Section 9.3.4**, and such failure continues for ten (10) days in the case of such a payment obligation or thirty (30) days in the case of any other obligation, except such thirty (30) day period shall be extended if: (a) curing such failure reasonably requires more than thirty (30) days, (b) PNM commences such cure within such thirty (30) day period and diligently prosecutes such cure, and (c) such cure is accomplished within seventy-five (75) days, in each case after PNM receives a Notice from Customer with respect thereto.

9.4 Customer's Remedies. In the event of an uncured PNM Event of Default and subject to **Section 10**, Limitations Liabilities, Customer shall have the following remedies:

9.4.1 Terminate this Contract by delivery of Notice to PNM; and

9.4.2 Avail itself of any other rights and remedies that may be available to Customer or its assignees under this Contract and Applicable Law, including any equitable remedy to enforce the obligations of PNM under this Contract.

9.5 Other Termination. This Contract also may be terminated in accordance with the provisions set forth below:

9.5.1 Change in Law. This Contract shall terminate automatically if PNM is required by any law, rule, order, or regulation to cease providing the services it is required to provide under this Contract, or if PNM or Customer is required by any law, rule, order or regulation to cease performing the obligations it agrees to perform pursuant to this Contract.

~~9.5.2 NMPRC Approval. If the condition in **Section 2.1** of this Contract is not satisfied on or before January 1, 2019 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this Contract shall automatically terminate ten (10) Days after the date on which the Parties conferred, with no further obligation or liability of either Party to the other Party. For the avoidance of doubt, upon termination of this Contract under this **Section 9.5.2**, the Parties' obligations shall continue to be governed by the terms and conditions of the First Amended Contract.~~

9.5.2 [Reserved].

9.5.3 Extended Uncontrollable Forces. Either Party may terminate this Contract upon Notice, which termination shall be effective five (5) Business Days after such Notice is given, if the delay in or failure of performance caused by Uncontrollable Forces extends

for more than three hundred sixty-five (365) consecutive days.

9.6 Early Termination Payment. If this Contract is terminated or caused to be terminated for any reason other than a PNM Event of Default (a) after the satisfaction of the conditions precedent in **Section 2** and (b) before the end of the Term, Customer shall pay to PNM an early termination payment ("**Early Termination Payment**"), which is intended to cover PNM's financial obligations arising under the ~~Initial Solar Facilities PPAs and any Additional Renewable Energy Procurement.~~SSC Resource Procurements. The methodology for determining the Early Termination Payment is set forth in **Exhibit E**, attached hereto. PNM shall use all commercially reasonable efforts to mitigate any such financial obligations. Customer shall pay PNM the Early Termination Payment as set forth in **Exhibit E**.

## 10. LIMITATIONS OF LIABILITIES

10.1 Limit on Warranties. ~~-~~EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS CONTRACT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS CONTRACT SATISFY THE ESSENTIAL PURPOSES HEREOF.

10.2 Direct Damages. Subject to **Section 15.6**, if no remedy or measure of damages is expressly provided herein, 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. Unless expressly provided in this Contract, including without limitation the provisions of **Section 13** (Indemnification), neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise.

10.3 Liquidated Damages. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or ~~Losses~~damages.

## 11. TAXES

Customer will be liable for and will pay, and will indemnify, defend, and hold harmless PNM and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel (collectively, "**Representatives**") from and against, any and all taxes and contributions or any interest accrued and penalties imposed, and reasonable attorney fees excises, assessments, and other charges levied by any Governmental Authority on Customer with respect to or because of this Contract and the electric service provided hereunder. All invoices issued by PNM for electric service will separately show all New Mexico gross receipts, compensating, sales, and other similar taxes properly charged to Customer.

## 12. REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties. On the Effective Date, each Party represents, warrants and covenants to the other Party that:

12.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

12.1.2 Except for the approval of the NMPRC, in the case of PNM, it has or to its knowledge expects to timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Contract;

12.1.3 The execution, delivery and performance of this Contract are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

12.1.4 This Contract constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

12.1.5 There is not pending, or to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under this Contract;

12.1.6 No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Contract;

12.1.7 It is acting for its own account and its decision to enter into this Contract is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party, and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Contract; and

12.1.8 It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Contract in deciding to enter into this Contract.

## 13. INDEMNIFICATION

13.1 By Customer. Customer shall defend, indemnify, and hold harmless PNM and any Person acting for or on behalf of PNM, and each of their respective employees, agents, partners, Affiliates, shareholders, directors, officers, and assigns (each a "**PNM Indemnitee**"), from and against all Losses that arise out of or result from:

13.1.1 any negligent, reckless, or otherwise tortious act or omission (including strict liability) during the performance of its obligations under this Contract, of Customer or any Affiliate thereof, or anyone directly or indirectly employed by any of them, or

anyone for whose acts they may be liable, but only to the extent not caused or resulting from the negligent, reckless, or otherwise tortious act or omission of the PNM Indemnitees or any other third party for which Customer is not responsible;

13.1.2 personal injury or death of a third person, but only to the extent not caused or resulting from the negligent, reckless, or otherwise tortious act or omission of the PNM Indemnitees or any other third party for which Customer is not responsible; and

13.1.3 the breach or default of any obligation, representation or warranty of Customer under this Contract to the extent such Losses arise out of or result from any demand, claim, litigation, action, suit or proceeding by a Person other than either of the Parties or PNM Indemnitees.

13.2 By PNM. PNM shall defend, indemnify, and hold harmless Customer and any Person acting for or on behalf of Customer and each of their respective employees, agents, partners, Affiliates, shareholders, directors, officers, and assigns (each a "**Customer Indemnitee**") from and against all Losses that arise out of or result from:

13.2.1 any negligent, reckless, or otherwise tortious act or omission (including strict liability) during the performance of its obligations under this Contract, of PNM or any Affiliate thereof, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, but only to the extent not caused or resulting from the negligent, reckless, or otherwise tortious act or omission of the Customer Indemnitees or any other third party for which PNM is not responsible;

13.2.2 personal injury or death of a third person, but only to the extent not caused or resulting from the negligent, reckless, or otherwise tortious act or omission of the Customer Indemnitees or any other third party for which Customer is not responsible; and

13.2.3 the breach or default of any obligation, representation or warranty of PNM under this Contract to the extent such Losses arise out of or result from any demand, claim, litigation, action, suit or proceeding by a Person other than either of the Parties or Customer Indemnitees.

## 14. ASSIGNMENT

14.1 Assignment by Customer. Customer may, at its option and at any time, assign this Contract, in whole or in part to (a) an Affiliate of Customer, or (b) any person or entity succeeding to all or substantially all of Customer's assets; provided, in the case of an assignment to an Affiliate or other assignee with a Market Cap of less than USD $100,000,000,000 (one hundred billion dollars), such assignee shall deliver to PNM a guaranty to secure the payment and performance when due of its obligations under this Contract. The guaranty shall continue in full force and effect until all such obligations have been discharged. The guaranty shall be in all material terms the same as set forth on **Exhibit F** and shall be issued by a guarantor that (a) has an unsecured senior long-term debt rating of "BBB-" or better by ~~Standard and Poor's Corporation~~S&P Global and "Baa3" or better by Moody's Investors Service, Inc. (or, if both are not available, comparably

determined ratings from one or more alternate rating sources acceptable to PNM), or (b) has **Market Cap** that is no less than USD $100,000,000,000 (one hundred billion dollars). "**Market Cap**" means the market capitalization of an entity, calculated as the share price (determined by using the closing price for the applicable trading day) times the number of shares outstanding.

14.2 Assignment by PNM. PNM may, at its option and at any time, assign this Contract, in whole or in part to an Affiliate of PNM due to a reorganization of any assets, business function or structure of PNM. Other than to an Affiliate, PNM shall not assign or transfer its interest in this Contract without first obtaining the written consent of Customer, which consent shall not be unreasonably withheld, conditioned or delayed.

## 15. TREATMENT OF CONFIDENTIAL INFORMATION

15.1 Definition. As used in this Contract, "**Confidential Information**" means any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Contract, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials. Confidential Information shall not include any information that: (a) is already in the public domain or which becomes public knowledge absent any violation of the terms of this Contract; (b) was already in the possession of a Party prior to disclosure by the other Party; (c) a Party obtains from another Person which such Party reasonably believes was not under an obligation of confidentiality; or (d) is or becomes generally available to, or is independently known to or has been or is developed by, any Party or any of its Affiliates or Representatives other than materially as a result of any disclosure of proprietary information by the disclosing Party to the receiving Party.

15.2 Confidentiality Obligation. Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in **Section 15.3** and **Section 15.4**, each receiving Party will (a) keep strictly confidential and take reasonable precautions to protect against the disclosure of (i) the terms and conditions and other facts with respect to this Contract and (ii) all Confidential Information, and (b) use all Confidential Information solely for the purposes of performing its obligations under this Contract and not for any other purpose; provided, a Party may disclose facts, terms and conditions referred to in clause (a) above and Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Contract if, prior to being told of such matters or being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Contract and are directed to comply with the requirements of this Contract. Each Party will be responsible for any breach of this Contract by its Representatives.

15.3 Disclosures to Governmental Authorities. Upon twenty (20) days prior Notice to Customer, PNM may disclose the terms, conditions or other facts with respect to this Contract and all Confidential Information furnished or made available by either Party pursuant to this Contract:

15.3.1 As required by Applicable Law, to any duly authorized Governmental Authority, including without limitation, the NMPRC, the FERC, and the Securities and

Exchange Commission; provided, each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Contract by requesting confidential treatment to the extent appropriate and permitted by Applicable Law; and

15.3.2 To the extent necessary to comply with any Applicable Law or any discovery or data request of a party to any proceeding pending before any of the foregoing; provided, PNM shall, prior to any such disclosure by it, cooperate in good faith with Customer and use commercially reasonable efforts to seek confidential treatment by the Governmental Authority of the Confidential Information or other information disclosed to any of them by PNM under this **Section 15.3**. PNM shall have no liability whatsoever to Customer in the event of any unauthorized use or disclosure by a Governmental Authority of any Confidential Information or other information disclosed to any of them by PNM.

15.4 Compelled Disclosure.

15.4.1 If any Party or its respective Representatives become subject to a requirement of Applicable Law to disclose any Confidential Information, or any part thereof, or any other matter required by **Section 15.1** to be kept confidential, such Party (a) will promptly notify the other Party of the existence, terms, and circumstances of such requirements so that such other Party may seek an appropriate protective order or waive compliance with the provisions of this Contract, and (b) will, and will cause its Representatives to, cooperate fully with such other Party (at the expense of such other Party) in seeking a protective order or other assurance that confidential treatment will be accorded to the disclosed Confidential Information or other matter.

15.4.2 If a Party complies with **Section 15.4.1** but it or its Representatives are compelled, in the opinion of its legal counsel, to make disclosure in response to a requirement described in **Section 15.4.1** or else stand liable for contempt or suffer other penalty, the compelled Party may disclose only that portion of the Confidential Information which is legally required and will exercise commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information or other matter.

15.4.3 ~~For the avoidance of doubt, disclosures~~Disclosures by PNM pursuant to **Section 15.3** shall not be subject to the procedures of this **Section 15.4**.

15.5 Ownership and Return of Information. All Confidential Information shall be and remain the property of the Party providing it. No right or license is granted to the receiving Party respecting the use of such Confidential Information by virtue of this Contract, except to the extent required for Customer's performance of its obligations under this Contract or as expressly granted hereunder. Upon the request of a Party, all Confidential Information, including all written or recorded copies thereof, shall be promptly returned to the requesting Party or destroyed, and if destroyed, such destruction shall be certified in writing to the requesting Party by a responsible officer of the other Party; provided, however, the receiving Party may retain one copy of the disclosing Party's Confidential Information solely for legal and audit compliance purposes.

15.6 Enforcement. The Parties agree that irreparable damage would occur if the confidentiality obligations under this Contract were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party will be entitled to seek an injunction or injunctions to prevent breaches of this **Section 15** and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.

15.7 Publicity.

15.7.1 Except as otherwise agreed to herein, no announcement or press release regarding the arrangement contemplated under this Contract, including the existence hereof, shall be made by either Party without the prior written approval of the other Party. In addition, without obtaining the other Party's prior written consent, a Party shall not, and shall cause its agents not to, engage in advertising, promotion or publicity containing non-public information concerning this Contract, or make public use of the other Party's identification in any circumstances related to this Contract or otherwise. As used in the preceding sentence, "identification" means any corporate name, trade name, trademark, service mark, insignia, symbol, logo or any other product, service or organization designation, or any specification or drawing owned by a Party or its Affiliates or any representation thereof.

15.7.2 PNM shall use commercially reasonable efforts in connection with each ~~PPA~~SSC Resource Procurement to obtain and grant to Customer the exclusive right to advertise, market, and promote to the general public the benefits of all the RECs that are generated under the ~~Initial Solar Facilities PPAs and any Additional Renewable Energy~~SSC Resource Procurement and delivered to Customer during the Term, including but not limited to the right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from the creation, sale or retirement of such RECs (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**").

## 16. DISPUTE RESOLUTION

16.1 Mediation. If any dispute between the Parties arises under this Contract which cannot be resolved through negotiations between the Parties, a Party may request mediation by a mediator agreed to by both Parties. Costs of mediation shall be apportioned according to **Section 16.3**. Disputes that are not resolved by mediation within ninety (90) days of referral to mediation shall be resolved pursuant to **Sections 16.2** through **16.4;** provided, however, nothing **in Sections 16.2** through **16.4** shall prevent either Party from seeking resolution by the NMPRC of any dispute arising under this Contract that is within its jurisdiction or prevent either Party from seeking any remedy by the NMPRC within its jurisdiction through any procedure within the NMPRC's authority.

16.2 Arbitrable Disputes. The Parties acknowledge that arbitration is not available for disputes involving matters within NMPRC jurisdiction except as provided in 1.2.2.18 and 1.2.2.19

NMAC. If there is disagreement as to whether a dispute is within NMPRC jurisdiction, the parties shall seek a determination from the NMPRC whether the dispute is subject to its jurisdiction. The Parties may agree to arbitration pursuant to 1.2.2.18 and 1.2.2.19 NMAC of any dispute arising under this Contract that is within the NMPRC's jurisdiction.

16.3 Claims Outside the NMPRC's Jurisdiction. If the dispute involves a claim that is outside the NMPRC's jurisdiction and Parties are unable to resolve a dispute regarding such matters through mediation or any other remedies within the NMPRC's jurisdiction and the aggregate amount of the claim (including counterclaims) arising under this Contract is five hundred thousand dollars ($500,000) or less, then, upon the request of either Party, the dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the then-prevailing Commercial Rules of the American Arbitration Association. A Party electing to submit a dispute that is outside the NMPRC's jurisdiction to arbitration shall give the other Party a timely demand for arbitration and shall file the demand and the requisite fee with the American Arbitration Association. Such demand for arbitration shall describe the nature of the dispute and the amount in controversy. The Parties shall then jointly select a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held in Albuquerque, New Mexico. Discovery shall be by agreement of the Parties or as ordered by the arbitrator, provided that the Parties shall comply with the following minimum discovery requirements: at least one hundred twenty (120) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration, all documents in any way related to the dispute, a list of witnesses and a summary of the matters as to which each witness is expected to testify. A reasonable number of depositions may be taken. The arbitrator shall decide the dispute in strict accordance with this Contract and by providing a reasoned award within thirty (30) days of the conclusion of the hearings. The award entered by the arbitrator shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof. All costs of mediation and arbitration (including the fees of the mediator and arbitrator) shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel costs, witness fees, photocopying and similar costs. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico. Indemnity claims are not subject to mandatory arbitration. An arbitration demand shall include all claims and disputes then ripe for the dispute.

16.4 Litigation of Larger Claims. If the aggregate amount of the claims in any dispute that is outside of the NMPRC's jurisdiction arising under this Contract exceeds five hundred thousand dollars ($500,000), either Party may bring an action only in the federal or state courts of New Mexico; provided, however, that any matters within the jurisdiction of the NMPRC relating to such dispute shall first be brought to the NMPRC for resolution. If there is disagreement as to whether a dispute is within NMPRC jurisdiction, the parties shall seek a determination from the NMPRC whether the dispute is subject to its jurisdiction.

16.5 Continued Performance. The Parties agree that they will continue to diligently perform their obligations pursuant to this Contract during the pendency of any dispute, including any dispute over payments claimed due and owing by Customer.

## 17. NOTICE

17.1 Required Notices to Customer. PNM shall provide Notice to Customer as soon as reasonably practicable of any dispute, statement error, and other matter arising under an ~~Initial~~

~~Solar Facilities PPA or any Additional Renewable Energy~~SSC Resource Procurement to the extent that it may affect the costs to be passed through to Customer under this Contract.

17.2 Method of Giving Notice. All Notices, requests, statements, invoices, or payments shall be made as specified in **Exhibit G**. Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, e-mail or facsimile.

17.3 When Notice Deemed Given. Notice provided in accordance with this **Section 17** shall be deemed given as follows:

17.3.1 Notice by facsimile, e-mail or hand delivery shall be deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be deemed given at the close of business on the next Business Day;

17.3.2 Notice by overnight United States mail or courier service shall be deemed given on the next Business Day after it was sent out; and

17.3.3 Notice by first class United States mail shall be deemed given three (3) Business Days after the postmarked date.

17.4 Effective Date of Notice. Notices shall be effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Contract. The requirement to give Notice shall not apply to matters relating to day-to-day operations.

17.5 Change in Information. A Party may change its designated representatives, addresses and other contact information at any time or from time-to-time by providing Notice to the other Party.

## 18. VARIANCE FROM 17.1.210.12.(B) NMAC AND PNM RULE NO. 4

Due to the size and long-term nature of the financial investment Customer intends to make to develop, construct, own and operate a data center in PNM's service territory in New Mexico, and due to Customer's need for regulatory certainty regarding the terms and conditions of this Contract, this Contract does not contain a provision that it and associated rate schedules shall at all times be subject to change pursuant to Commission order, as provided in 17.1.210.12(B) NMAC, or a provision that PNM reserves the right to modify the rates provided for in this Contract by filing new tariffs with the Commission, as provided in PNM Rule No. 4, ¶ C. The circumstances under which PNM may propose modifications to the rate schedules associated with this Contract by filing new tariffs with the Commission or under which the Commission may modify those rate schedules are described in **Sections 5** and **19** of this Contract.

## 19. AMENDMENT

This Contract may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto and approved by the NMPRC, to the extent required by statute or by NMPRC rule or order.

## 20. SURVIVAL OF OBLIGATIONS

The provisions of this Contract that by their nature are intended to survive the termination, cancellation, completion, or expiration of this Contract shall continue as a valid and enforceable obligation of the Party notwithstanding any such termination, cancellation, completion, or expiration. Such provisions include, without limitation:

(a) The obligation of Customer to make, and the right of PNM to receive, the Early Termination Payment under **Section 9.6**;

(b) The indemnity obligations to the extent provided in **Section 13**;

(c) The obligations of confidentiality set forth in **Section 15**;

(d) The right to pursue remedies under **Section 9**;

(e) The limitation of damages under **Section 10**;

(f) Any payment obligation of either Party arising prior to the date of termination.

## 21. AGREEMENT AUTHORS

The Parties have agreed to this Contract and no ambiguity may be construed against either Party based on the identity of the author or authors of this Contract.

## 22. BINDING EFFECT

This Contract and all provisions hereof shall inure to the benefit of and be binding upon the Parties, their successors, and permitted assigns.

## 23. GOVERNING LAW AND VENUE

The entire relationship of the Parties, this Contract, any remedies of the Parties, and any litigation or legal proceedings (whether grounded in tort, contract, statutory, equitable, or other law) between, involving, or arising among, the Parties, shall be governed by, interpreted in accordance with, and construed consistent with, the laws of the State of New Mexico, without regard to the choice of law principles that may otherwise dictate the application of the laws of another state. Any lawsuit or other legal proceeding (whether at law or in equity) between, involving, or arising among the Parties, or relating to this Contract, will be commenced and pursued solely in the state or federal courts located in Bernalillo County, New Mexico. The Parties hereby waive any challenge they may have to the jurisdiction of such courts, consent to jurisdiction and venue in such courts, and relinquish any right to seek a change of venue or forum for any

reason, including the alleged inconvenience of the venue or forum.

## 24. WAIVER

No delay, failure or refusal on the part of a Party to exercise or enforce any right under this Contract shall impair such right or be construed as a waiver of such right or any obligation of the other Party, nor shall any single or partial exercise of any right hereunder preclude other or further exercise of any right. The failure of a Party to give Notice to the other Party of a breach of this Contract shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

## 25. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be deemed to be an original, but all such counterparts will together constitute but one and the same instrument. PNM and Customer may retain a duplicate copy of this Contract, which will be considered an equivalent to this original.

## 26. RECORDS; AUDIT

PNM shall create and keep accurate accounts of calculations, third party costs, expenses and liabilities substantiating amounts due from Customer to PNM under this Contract, including without limitation the Special Service Rate, the Green Energy Rider, and the ~~Initial Solar Facilities PPAs and all Renewable Energy~~SSC Resource Procurements ("**Records**"). PNM shall maintain the Records in a format sufficient to allow verification that they are complete, accurate, and up-to-date. PNM shall keep and maintain the Records in accordance with the requirements of 17.3.310.10 NMAC, and Customer may inspect and audit those records during normal business hours upon reasonable advance notice and with as little impact to PNM's business as reasonably possible. All external costs of such audits and inspections will be borne by Customer.

## 27. ENTIRE AGREEMENT

This Contract and any exhibits and attachments hereto, as each may be amended from time to time, represent the entire agreement and understanding between PNM and Customer with respect to the subject matter hereof, and supersedes any prior understandings, representations or agreements, whether verbal or written, between the Parties as to the subject matter hereof.

[*Signature Page(s) Follow*]

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed by their respective duly authorized representatives as of the Execution Date.

PUBLIC SERVICE COMPANY OF NEW MEXICO,
a New Mexico corporation

By: _____
Printed Name: ~~Ronald N. Darnell~~Henry E. Monroy
Its: Senior Vice President~~, Regulatory Affairs~~ and Chief Financial Officer

GREATER KUDU LLC.
a Delaware limited liability company

By: _____
Printed Name: _____
Its: _____

**EXHIBIT A**

**[RESERVED]**

**EXHIBIT B**

**FORM OF THIRD PARTY PPA**

**FORM OF THIRD PARTY ESA**

~~**(Attached)**~~

# EXHIBIT C
## *Form of Green Energy Rider*

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**ELECTRIC SERVICES**
~~1ST~~
**3rd REVISED RIDER NO. 47 CANCELLING ~~ORIGINAL~~2nd REVISED RIDER NO. 47**

GREEN ENERGY RIDER

EXPLANATION OF RATE: This Green Energy Rider ("Rider") is available to eligible customers who wish to have the Company acquire ~~renewable resources~~SSC Resources (as that term is defined in the Special Service Contract) in an amount equal to some or all of the customer's electric utility usage requirements and who enter into a Special Service Contract, approved by the New Mexico Public Regulation Commission ("NMPRC"), that establishes the rates and other terms and conditions for such service. The Special Service Contract shall establish rates, pursuant to the methodology described in this Rider, that cover the Company's entire cost of the ~~renewable resources and Alternative Capacity Projects as defined in the Special Service Contract~~SSC Resources for the term of the Special Service Contract, with adequate provisions to secure the customer's payment obligation. The Alternative Capacity Projects that can serve the customer's needs must be acceptable to the customer and PNM.

Except as provided in the Special Service Contract, service will be furnished subject to the Company's Rules and Regulations and any subsequent revisions. These Rules and Regulations are available at the Company's office and are on file with the NMPRC. These Rules and Regulations are a part of this Schedule as if fully written herein.

In the event of a conflict or contradiction between the terms of the Special Service Contract and this Green Energy Rider, the terms of the Special Service Contract shall control.

TERRITORY: All territory served by the Company in New Mexico.

CUSTOMER ELIGIBILITY: To be eligible to take service under this Rider, a customer must meet all of the following conditions:

1) As of the date of commercial operation, ~~the~~any new customer served by this rider must not have previously received electric utility service from the Company.
2) The customer must enter into a Special Service Contract with the Company for a term that is coextensive with the customer's payment obligation for the renewable resources and Alternative Capacity Projects, and the NMPRC must approve the contract.
3) The customer must achieve a minimum demand of 10,000 kW.
4) ~~The~~Any new customer must cause the addition of ~~renewable resources~~SSC Resources of 10,000 kW-AC or more to be acquired by the Company.
5) The customer must ~~achieve a~~maintain an annual load factor of at least ~~75~~60%.
6) The customer must meet all of the requirements of Rate No. 36B.

The ~~7)~~ SSC Resources acquired for the customer that are interconnected to the PNM transmission or distribution system must adhere to the requirements governed by the Federal Energy Regulatory Commission (FERC) generation interconnection process as outlined in PNM's Open Access Transmission Service Tariff (OATT). The interconnection process, among other things, involves the study of the impacts of the generation facility to ensure that the proposed interconnection will not adversely affect PNM's system and the service to existing customers. The study may also identify upgrades to the PNM transmission or distribution system that may be required to accommodate the energy injection from the generation facility. Separate arrangements that are required to secure transmission service for the delivery of energy from the renewable resources are also governed by PNM's OATT.

RATE METHODOLOGY: The rates established in the Special Service Contract for service under this Green Energy Rider shall be consistent with the following:

1) If PNM acquires the ~~renewable resources or Alternative Capacity Projects~~SSC Resources through a purchased power agreement ("PPA"), energy storage agreement ("ESA"), or similar third-party agreement, the customer shall pay PNM the full cost of the ~~PPA~~agreement (except as otherwise provided in the Special Service Contract) in periodic, typically monthly, payments that coincide with PNM's payment obligation under the PPA.

2) If the ~~renewable resources or Alternative Capacity Projects~~SSC Resources are owned by PNM, the customer shall pay PNM monthly rates based on the Company's full cost of service revenue requirement for those ~~renewable resources or Alternative Capacity Projects~~SSC Resources, including a return on the investment equal to the Company's weighted average cost of capital, and operation and maintenance expenses, including fuel, or such other pricing structure as may be proposed by PNM and approved by the ~~Commission~~NMPRC that will fully reimburse PNM for the full cost of the ~~renewable resources or Alternative Capacity Projects~~SSC Resources. The initial revenue requirement shall be based on the cost of service used to set rates in PNM's most recent rate case and shall be adjusted, as necessary, in future rate cases.

3) PNM shall provide to the Customer an Excess Energy Production Credit in accordance with terms described in the Customer's Special Service Contract.

TAX ADJUSTMENT: Billings under this Rider may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the Company and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

LIMITATION OF RATE: Electric service under this Schedule shall not be resold or shared with others.

# EXHIBIT D

*Form of Special Service Rate*

**PUBLIC SERVICE COMPANY OF NEW MEXICO**
**ELECTRIC SERVICES**

~~2ND~~**~~6th~~** **REVISED RATE NO. 36B**
~~CANCELING 1ST~~ **CANCELLING 5th REVISED RATE NO. 36B**

SPECIAL SERVICE RATE – RENEWABLE ENERGY RESOURCES

EXPLANATION OF RATE: This Special Service Rate, the companion Green Energy Rider (Rider No. 47) and the companion Production Cost Allocation Rider (Rider No. 49) are available to eligible customers who wish to have the Company acquire ~~renewable energy resources~~SSC Resources (as that term is defined in the Special Service Contract) in an amount equal to some or all of the customer's electric utility service requirements and who enter into a Special Service Contract, approved by the New Mexico Public Regulation Commission ("NMPRC"), that establishes the rates and other terms and conditions for such service. Rates covering the full cost of the renewable energy resources shall be established in the Special Service Contract pursuant to the Green Energy Rider. This Special Service Rate, along with the Production Cost Allocation Rider, prescribes the methodology that the Company and ~~the~~each customer will use in the Special Service Contract to establish all other charges to be paid by ~~the~~each customer for electric service. In each general rate proceeding, the Company will perform a separate class cost of service calculation for each Special Service Contract customer to ensure the accuracy of all charges. If the electric service requested by the customer requires the Company to extend or upgrade its transmission or other facilities, the cost of the extension or upgrade shall be paid by the customer to the extent consistent with generally accepted regulatory principles of cost causation, and shall be included in the rates set in the Special Service Contract, with adequate provisions to secure the customer's payment obligation.

Except as provided in the Special Service Contract, service will be furnished subject to the Company's Rules and Regulations and any subsequent revisions. These Rules and Regulations are available at the Company's office and are on file with the NMPRC. These Rules and Regulations are a part of this Schedule as if fully written herein.

In the event of a conflict or contradiction between the terms of the Special Service Contract and this Special Service Rate, the terms of the Special Service Contract shall control.

TERRITORY: All territory served by the Company in New Mexico.

CUSTOMER ELIGIBILITY: To be eligible for this Special Service Rate, a customer must meet all of the following conditions:

1) As of the date of commercial operation, ~~the~~any new customer served by this rate must not have previously received electric utility service from the Company.
2) The customer must enter into a Special Service Contract with the Company for a term that is coextensive with the customer's payment obligation for the renewable resources, and the NMPRC must approve the contract.
3) The customer must achieve a minimum demand of 10,000 kW.
4) The customer must ~~achieve a~~maintain an annual load factor of at least ~~75~~60%.
5) ~~The~~Any new customer must cause the addition of ~~renewable resources~~SSC Resources of 10,000 kW-A/C or more to be acquired by the Company.
6) The customer must meet all of the requirements of the Company's Green Energy Rider (Rider No. 47).

TYPE OF SERVICE: Three-phase service delivered at the Company's available transmission voltage of 115 kV or higher.

SUBSTATION EQUIPMENT: All substation and distribution transformers, the necessary structures, voltage regulating devices, lightning arrestors, and accessory equipment required by the customer in order to utilize the Company's service at 115 kV or higher voltage shall be installed, paid for, owned, operated, and maintained by the customer.

The customer shall also provide at its expense suitable protective equipment and devices so as to protect the Company's system and service and other electric users from disturbances or faults that may occur on the customer's system or equipment.

The customer shall at all times keep each of the three phases balanced as far as practicable so as not to affect service and voltage to other customers served by the Company. The customer shall not operate any equipment in a manner which will cause voltage disturbances elsewhere on the Company's system.

~~NET RATE PER MONTH OR PART THEREOF FOR EACH SERVICE LOCATION~~MONTHLY CHARGE: The ~~rate~~Charge for electric service provided shall be the sum of charges calculated in accordance with A, B, C, D, E, F, G and H below. On-Peak period is from 8:00am to 8:00pm Monday through Friday (60 hours per week). Off-Peak period is all times other than the On-Peak period (108 hours per week).

~~(A) CUSTOMER CHARGE:~~

Individual Rates shall be calculated for Rate Elements A, B, D, E, and F for each customer taking service under this rate based on each customer's load characteristics and SSC Resource procurements made by the Company consistent with class Allocated Revenue Requirement.

(A) CUSTOMER CHARGE:

All Months: ~~$3,659.84 per bill~~

| Customer | Customer Charge |
|---|---|
| "A" or Greater Kudu | $21,857.02 per bill |
| "B" | Placeholder for new customer |

(B) ~~-~~ TRANSMISSION DEMAND CHARGE:

All months: ~~$3.85 per Billable On-Peak kW~~

| Customer | Customer Charge |
|---|---|
| "A" or Greater Kudu | $4.525 per Billable On-Peak kW |
| "B" | Placeholder for new customer |

(C) FUEL COST ADJUSTMENT APPLIED TO SYSTEM SUPPLIED ENERGY:

During each hour when the energy from the

~~(C) ENERGY CHARGE FOR SYSTEM SUPPLIED ENERGY:~~

~~During each hour when the energy from the renewable energy resources~~SSC Resources, including discharge of SSC Storage Resources, acquired by PNM to meet all or part of the customer's load is less than the customer's hourly usage, the balance of hourly energy will be supplied by other energy resources available to PNM for overall system needs. For all hourly energy supplied by PNM's other energy resources, except to the extent of curtailments of SSC Resources for which the customer is paying the fixed price for energy and RECs in the Third Party PPA as provided in Section 8.1 of the SSC, the customer will pay 100% of the fuel rates under the Company's Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC") applicable to transmission voltage customers.

(D) ENERGY RELATED NON-FUEL CHARGE FOR SYSTEM SUPPLIED ENERGY:

During each hour when the energy from the SSC Resources, including discharge of SSC Storage Resources, acquired by PNM to meet all or part of the customer's load is less than the customer's hourly usage, the balance of hourly energy will be supplied by other energy resources available to PNM for overall system needs. For all hourly energy supplied by PNM's other energy resources, ~~the customer will pay the fuel rates under the Company's Fuel and Purchased Power Cost Adjustment Clause ("FPPCAC") applicable to transmission voltage customers~~except to the extent of curtailments of SSC Resources for which the customer is paying the fixed price for energy and RECs in the Third Party PPA as provided in Section 8.1 of the SSC, the following energy related non-fuel charge is applicable.

~~(D) ENERGY RELATED NON-FUEL CHARGE FOR SYSTEM SUPPLIED ENERGY:~~
~~During each hour when the energy from the renewable energy resources acquired by PNM to meet all or part of the customer's load is less than the customer's hourly usage, the balance of hourly energy will be supplied by other energy resources available to PNM for overall system needs. For all hourly energy supplied by PNM's traditional energy resources, the following energy related non-fuel charge is applicable.~~

Energy Related Non-Fuel Charge: ~~$0.0056210 per kWh~~

| Customer | Customer Charge |
|---|---|
| "A" or Greater Kudu | $0.0242411 per kWh |
| "B" | Placeholder for new customer |

(E) ~~-~~ CONTRIBUTION TO PRODUCTION COMPONENT:

~~During each hour when the energy from the renewable energy resources acquired by PNM to meet all or part of the customer's load is less than the customer's hourly usage, the balance of hourly energy will be supplied by other energy resources available to PNM for overall system needs. For all hourly energy supplied by PNM's traditional energy resources, the customer shall pay a contribution to production component. The component is described in the customer's Special Service Contract and may be fixed for a period of time as provided in that contract. Following the Company's next general rate case, this initial contribution to production component will be superseded by a demand-based Contribution to Production Component, as defined in the Special Service Contract, that will recover allocated production costs.~~

All months: ~~$xxx per Billable On-Peak kW~~

| Customer | Customer Charge |
|---|---|
| "A" or Greater Kudu | $X.XX per Billable On-Peak kW |
| "B" | Placeholder for new customer |

(F) ~~-~~ GREEN ENERGY RIDER CHARGE:

Pursuant to the Green Energy Rider No. 47, the customer will be responsible for all costs associated with ~~the renewable energy resources acquired~~SSC Resources procured to meet all or part of the customer's load.

(G) ~~-~~ OTHER APPLICABLE RIDERS:

Rider No. 36 – Renewable Energy Rider, and all other applicable rate riders shall be billed to the customer in accordance with the terms of the riders, and consistent with applicable statutes and NMPRC rules. Rider No. 16 -- the Energy Efficiency Rider shall not be applicable.

(H) ~~-~~ SPECIAL TAX AND ASSESSMENT ADJUSTMENT:

Billings under this Schedule may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and of all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the Company and levied or

assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

DETERMINATION OF MONTHLY ON-PEAK BILLABLE DEMAND: The monthly on-peak billable demand shall be as determined by appropriate measurement as defined by the Company, but in no event shall it be less than the highest of the following: (a) the actual highest On-Peak metered demand registered during the current month, or (b) 10,000 kW. ~~The~~ On-Peak period is from 8:00am to 8:00pm Monday through Friday (60 hours per week). ~~The~~ Off-Peak period is all times other than the On-Peak period (108 hours per week).

INTERRUPTION OF SERVICE: The Company will use reasonable diligence to furnish a regular and uninterrupted supply of energy. However, interruptions or partial interruptions may occur or service may be curtailed, become irregular, or fail as a result of circumstances beyond the control of the Company, or are the results of acts of public enemies, accidents, strikes, legal processes, governmental restrictions, fuel shortages, breakdown or damages to generation, transmission, or distribution facilities of the Company, repairs or changes in the Company's generation, transmission, or distribution facilities, and in any such case the Company will not be liable for damages. Customers whose reliability requirements exceed these normally provided should advise the Company and contract for additional facilities and increased reliability as may be required. The Company will not, under any circumstances, contract to provide 100 percent reliability.

ACCESSIBILITY: Equipment used to provide electric service must be physically accessible. The metering must be installed on each service location at a point accessible to Company personnel at any time.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

LIMITATION OF RATE: Electric service under this Schedule shall not be resold or shared with others.

**EXHIBIT D1**

~~*Special Service Rate Element Calculations – Original Special Service Rate Period*~~

~~**[INSERT PRIOR EXHIBIT D2]**~~

## ~~EXHIBIT D2~~

*Special Service Rate Calculation~~ – Remainder of Term~~*

(A) CUSTOMER CHARGE: There shall be a monthly customer charge that is designed to recover the cost of all customer-related functions, including meters, meter reading and billing costs, as determined and allocated to customer rate classes in PNM general rate cases.

(B) TRANSMISSION DEMAND RATE: This rate is applied to a customer's monthly On-peak Billable Demand and is designed to recover costs related to PNM's transmission capacity, as determined and allocated to customer in PNM general rate cases. The Transmission Demand Rate shall be calculated as described below:

The Transmission Demand Rate shall be the ~~product~~quotient of:

~~The quotient of:~~

(1) The~~Approved Retail~~ Transmission ~~Capacity~~ Revenue Requirement ~~used~~allocated to ~~set rates~~Customer under Rate No. 36B--Special Service Rate, in PNM's general rate case, divided by:

~~(2) The sum of all Retail Transmission Capacity Coincident Peak Demands used to allocate the Retail Transmission Capacity Revenue Requirement to rate classes in PNM's general rate cases,~~

~~Multiplied by the quotient of:~~

~~(3) The sum of Customer's Transmission Coincident Peak Demands, divided by:~~

~~(4)~~(2) The sum of Customer's annual billable demands.

(C) CONTRIBUTION TO PRODUCTION COMPONENT: This rate is applied to ~~a customer's~~Customer's monthly On-peak Billable Demand and is designed to ~~set a contribution to~~recover production costs ("**Contribution to Production Component**"). The Contribution to Production Component ~~is~~in a rate case will be calculated based on the Customer's Production Revenue Requirement and the Production Revenue Requirement Offset, as described below~~:~~.

The ~~Transmission Demand Rate~~ Production Revenue Requirement shall be the product of:

The quotient of:

~~The quotient of:~~

(1) The ~~Retail~~total system retail Production ~~Capacity~~ Revenue Requirement used

to set rates in PNM's general rate case divided by:

(2) The sum of all ~~Retail~~system retail Production ~~Capacity~~-related Coincident Peak ~~Demands~~Demand Loads used to allocate the ~~R~~retail Production ~~Capacity~~ Revenue Requirement to rate classes in PNM's general rate cases.

Multiplied by:

(3) The sum of Customer's Coincident Peak Billable Demand Loads used for the allocation of the Production Revenue Requirement.

The Production Revenue Requirement Offset shall be the product of:

The quotient of:

(1) The result of (1) and (2) above,

Multiplied by:

~~(3)~~ The sum of ~~Customer's Production~~ Coincident Peak ~~Demands.~~

~~The~~ Production ~~Revenue Requirement Offset shall be the product of:~~

~~The quotient of:~~

~~(1) The Retail Production Capacity Revenue Requirement used to set rates in PNM's general rate cases divided by:~~

~~(2) The sum of all Retail Production Capacity Coincident Peak Demands during all months utilized to allocate Retail Production Capacity Revenue Requirement to rate classes.~~

~~Multiplied by:~~

~~(3)~~(2) ~~The sum of coincident peak production~~ for all ~~Renewable~~SSC Energy ~~Facilities and Alternative Capacity Projects (collectively, "~~Resources~~")~~ plus the sum of all SSC Storage Resource Capacity Value Factors times their applicable certified rated capacity,~~ deemed to have capacity value at the time of each PNM general rate case utilizing the methodology set forth in Section D (**"Coincident Peak Production Methodology"**).

The Contribution to Production Component shall be the quotient of:

(1) The Production Revenue Requirement minus:

(2) The Production Revenue Requirement Offset.

Divided by:

(3) The sum of Customer's annual billable demands~~;~~ (excluding any demands related to charging SSC Storage Resources); provided, however, if the Production Revenue Requirement Offset is greater than the Production Revenue Requirement, then the Contribution to Production Component will be

set to zero ($0.00).

(D) COINCIDENT PEAK PRODUCTION METHODOLOGY:

(1) The coincident peak periods proposed in PNM's general rate cases for class allocations are based on anticipated highest demand hours~~, three years' history for rate classes with weather sensitive loads, and base period actuals for rate classes that are not weather sensitive (collectively,~~ for rate classes ( **"CP Peak Hours"**).

(2) For each SSC Energy Resource that has been in service for at least three years, PNM will use the average historical hourly energy production for those same three years during each of PNM's historical coincident peak periods at the CP Peak Hours as the SSC Energy Resource's Coincident Peak Production. If an SSC Energy Resource was curtailed during any CP Peak Hour for reasons where PNM owes compensation to the seller under the respective Third Party PPA (as provided for in Section 8 of the SSC), PNM shall adjust the production of that resource to reflect what the production during that CP Peak Hour would have been had it not been curtailed.

(3) For any SSC Energy Resource with less than three years of historical hourly production data, PNM will assume an effective Coincident Peak Production of 32% for wind (**"Stipulated Wind Capacity Value Factor"**), 42% for solar (**"Stipulated Solar Capacity Value Factor**~~"), and Alternative Capacity Projects will have stipulated capacity value factors as set in future PNM rate cases (**"Stipulated Alternative Capacity Project Capacity Value Factors"**) for production cost allocation purposes (the Stipulated Wind Capacity Value Factor, Stipulated Solar Capacity Value Factor, and Stipulated Alternative Capacity Project Capacity Value Factors together referred to herein as **"Stipulated Capacity Value Factor(s)"**). For example, the rate allocation will assume wind Coincident Peak Production of 32 MW for a wind resource with a rated nameplate capacity of 100 MW. The Stipulated Capacity Value Factors outlined in this Section (D)(3) will be used only in future PNM rate cases in which new rates become effective before January 1, 2026. PNM and Customer will make good faith efforts to negotiate appropriate new Stipulated Capacity Value Factors to be used in rate cases in which new rates become effective after January 1, 2026. If PNM and Customer cannot mutually agree on new Stipulated Capacity Value Factors, then they shall be set on the actual average historical Coincident Peak Production for each resource type as outlined in this Exhibit D2.~~")

(4) For any SSC Storage Resource, the Company will use the agreed **SSC Storage Resource Capacity Value Factor** for that resource.

~~(4)~~(5) A reconciliation of the Production Revenue Requirement Offset will occur for ~~those~~all SSC Energy Resources for any Test Period for which ~~the Coincident Peak Production was based on a Stipulated Capacity Value Factor for any test~~

~~year for which the~~ Stipulated Capacity Value Factors ~~a~~were utilized for cost allocation~~. The~~ purposes as defined in Rider No. 49. For this reconciliation ~~will be~~ PNM will compare the Production Revenue Requirement in the Test Period of the last rate case to the Production Revenue Requirement Offset as calculated ~~as follows~~below. For this comparison, the Production Revenue Requirement Offset will be based on:

~~i. PNM will compare the average of the actual Coincident Peak Production in the test year divided by the Resource's nameplate capacity (**"Actual Capacity Value Factor"**) to the Stipulated Capacity Value Factor of each Resource. If the aggregate Coincident Peak Production of the Resources based on the Actual Capacity Value Factor of each Resource is less than the aggregate Coincident Peak Production of the Resources based on the Stipulated Capacity Value Factors upon which rates were set, an under- allocation of production costs to the Customer would be deemed to occur.~~

- ~~If~~For SSC Energy Resources with less than 3 years of history, the actual aggregate Coincident Peak Production during the Test Period. For all other SSC Energy resources, calculated as provided in (D)(2) above.
- For SSC Storage Resources, the Coincident Peak Production will be the SSC Storage Resource Capacity Value Factor.

~~ii.~~ If the Production Revenue Requirement Offset calculated above is less than the Production Revenue Requirement from the last rate case, a deemed under-allocation ~~to~~from the Customer occurs~~,~~. PNM will quantify the total deemed under-allocation ~~and under-collection~~ of production costs for the ~~test year~~Test Period, including any period up to the implementation of the ~~reset rate. The Contribution to Production Component will be reset to recover going forward what would have been the correct allocation of production costs in the test period if the general rate case cost allocation had correctly assumed the actual Resource Coincident Peak Production as outlined in Section D(4)(i)~~Reset Rate, by recalculating Exhibit D1, as provided for ~~those Resources for which a Stipulated Capacity Value Factor was utilized. PNM will assess the reset rate on Customer's On-peak Billable Demand after completion of the reconciliation. The reset rate will remain~~ in ~~effect until the effective date of rates approved in PNM's next general rate case.~~

~~iii. The deemed under-allocation for the period from the effective date of the new rate to the effective date of the reset rate will be recovered through PNM Rate Rider No. 49, Production Cost Allocation~~ Rider~~.~~

~~iv.~~ii. ~~The sole purpose of Rate Rider No.~~ 49 ~~is for PNM to recover the amount of any under-collection from the establishment of a Contribution to Production Component based on Stipulated Capacity Value Factors~~

~~through the effective date of the reset rate resulting from the reconciliation process outlined in Section D(4).~~.

~~PNM will collect the deemed under-allocation identified in Sections D(4)(ii) and D(4)(iii) plus a carrying charge at the then-current customer deposit rate from Customer in equal monthly amounts for no more than eighteen (18) months. All such reconciliation amounts will be included on Customer's monthly bill for the relevant period.~~

FUEL COST ADJUSTMENT APPLIED TO

~~The additional revenues collected from the Customer due to the reset rate and any reconciliation amount billed to Customer under Rate Rider No. 49 will be booked to a regulatory liability and shall be returned to customers in PNM's next general rate case.~~

~~(5) Amounts collected and booked as a regulatory liability will be subject to a carrying charge paid by PNM at the then-current customer deposit rate.~~

(E) ~~ENERGY CHARGE FOR~~ SYSTEM SUPPLIED ENERGY: During each hour when the energy from the ~~renewable energy resources~~SSC Resources, including discharging of SSC Storage Resources acquired by PNM to meet all or part of the customer's load, including discharging of SSC Storage Resources is less than the customer's hourly usage, the balance of hourly energy will be supplied by other energy resources available to PNM for overall system needs. ~~For all System Supplied Energy~~For all hourly energy supplied by PNM's other energy resources, except to the extent of curtailments of SSC Resources for which the customer is paying the fixed price for energy and RECs in the Third Party PPA as provided in Section 8.1 of the SSC, the Customer will pay 100% of the applicable base fuel rate and fuel factor rate under PNM's Fuel and Purchased Power Cost Adjustment Clause (**"FPPCAC"**) applicable to transmission voltage customers.

(F) ENERGY RELATED NON-FUEL CHARGE FOR SYSTEM SUPPLIED ENERGY: Certain energy related costs are not currently included as fuel costs in PNM rates. To ensure that no subsidization by other retail customers takes place, PNM has set the energy related non-fuel rates for System Supplied Energy ~~equal to the level applied to any other transmission voltage customer classes in PNM's current general rate case. These rates are set during PNM general rate cases~~as determined in the corresponding PNM general rate case. This charge shall exclude SSC Resource curtailed energy for which PNM is supplying energy to Customer from other system resources.

## EXHIBIT E

*Methodology for Determining Early Termination Payment*

The Early Termination Payment shall be equal to the sum of the Contract Values for each of the Initial Solar Facilities Power Purchase Agreement and any Additional Renewable Energy Procurement (together, **"Renewable Energy Procurement"**) then in effect, at the time of termination, payable within twenty (20) days after Customer receives notice from PNM of the amount of the Early Termination Payment. PNM shall reimburse Customer for Transfer Proceeds within twenty (20) days of receipt of a final, non-appealable order from the NMPRC establishing the amount of the Transfer Proceeds, if any, and in the case of other Proceeds, within twenty (20) days after receipt by PNM of the Proceeds.

**"Contract Value"** means the present values of the product, for each year (or portion thereof) in the then remaining term of the ~~Initial Solar Facilities PPAs and any Additional Renewable Energy~~SSC Resource Procurement (determined without reference to the early termination), of (A) the quantity of energy and RECs expected to be produced during such year (or portion thereof) times (B) the purchase price for such energy and RECs for such year, provided, however:

(1) if PNM in its sole discretion decides to terminate ~~a PPA~~an SSC Resource Procurement as a result of an early termination of the Special Service Contract, Contract Value shall be equivalent to the early termination payment calculated pursuant to ~~a PPA~~the SSC Resource Procurement; or

(2) if PNM in its sole discretion decides to acquire ownership of a renewable energy facility that was the subject of a Renewable Energy Procurement, Contract Value shall be the original cost of the facility at the time the facility began providing service to the Customer plus all capital improvements less depreciation, or such other valuation approved by the NMPRC, to the extent the NMPRC allows the resource to be included in cost of service to all other customers; provided, however, that in no event shall Transfer Proceeds exceed Contract Price.

All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of the Special Service Contract.

**"Proceeds"** means payments received by PNM as a result of damages payments and insurance claims made by the Seller pursuant to any ~~PPA~~SSC Resource Procurement as well as any credit received by PNM for insurance in computing the early termination payment of any ~~PPA~~SSC Resource Procurement.

**"Transfer Proceeds"** means: (A) if the ~~Renewable Energy~~SSC Resource Procurement is from a ~~PPA~~third party, the present value of the ~~PPA~~SSC Resource Procurement charges to PNM allowed

to be recovered as a system resource from other customers by the NMPRC, calculated in the same manner as "Contract Value"; or (B) if the ~~Renewable Energy~~SSC Resource Procurement is a facility owned by PNM, or sought to be acquired by PNM, the original cost of the facility at the time the facility began providing service to the Customer plus all capital improvements less depreciation, or such other valuation approved by the NMPRC, to the extent the NMPRC allows the resource to be included in cost of service to all other customers; provided, however, that in no event shall Transfer Proceeds exceed Contract Price.

**EXHIBIT F**
*Form of Guaranty*

**GUARANTY OF** [CUSTOMER]
**BY** [NAME OF GUARANTOR]

THIS GUARANTY (this "Guaranty") is made as of [DATE], by [NAME OF GUARANTOR], a [STATE][ENTITY] ("Guarantor"), with a mailing address of [ADDRESS], Attention: [NAME], for the benefit of Public Service Company of New Mexico, a New Mexico corporation ("Counterparty").

**RECITALS:**

A. Counterparty and [CUSTOMER], a [STATE][ENTITY] ("Obligor"), entered into that certain Special Service Contract, dated as of the date hereof, between Counterparty and Obligor (as modified from time to time, the "Agreement").

B. Obligor is Guarantor's wholly-owned subsidiary.

**AGREEMENT:**

NOW, THEREFORE, in consideration of Counterparty's agreement to allow for Obligor's provision of this Guaranty, Guarantor hereby unconditionally and irrevocably guarantees the prompt payment by Obligor of all sums payable by Obligor under the Agreement all without regard to any counterclaim, set-off, deduction or defense of any kind which Obligor or the Guarantor may have or assert, and without abatement, suspension, deferment or diminution on account of any event or condition whatsoever; provided, however, that Guarantor shall be entitled to exercise or assert, as the case may be, any right, claim or defense that is available to Obligor, except as such right, claim or defense relates to bankruptcy, lack of capacity or lack of authority.

It is specifically agreed by Counterparty and Guarantor that (i) the terms of the Agreement may be modified by agreement between Counterparty and Obligor and that this Guaranty shall guarantee the performance of Obligor as so modified and (ii) the Agreement may be assigned by Counterparty to any assignee of Counterparty upon no less than ten (10) days' prior written notice to Guarantor. This Guaranty is a guarantee of payment and not of collection.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Counterparty to enforce any of the rights or remedies of Counterparty under the Agreement. This Guaranty shall continue to be effective or be reinstated if any payment to the Counterparty by Obligor with respect to the Agreement is returned to Obligor or is rescinded upon the insolvency, bankruptcy or reorganization of Obligor.

No notice of default by Obligor under the Agreement need be given by Counterparty to

Guarantor, it being specifically agreed that Guarantor's guarantee is a continuing guarantee under which Counterparty may proceed immediately against Obligor and/or against Guarantor

following any breach or default by Obligor under the Agreement beyond applicable notice and cure periods or for the enforcement of any rights which Counterparty may have as against Obligor under the terms of the Agreement or at law or in equity.

Counterparty shall have the right to proceed against Guarantor following any breach or default by Obligor under the Agreement beyond applicable notice and cure periods without first proceeding against Obligor and without previous notice to or demand upon either Obligor or Guarantor.

Guarantor hereby waives (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) any right to require Counterparty to proceed against Obligor or any other guarantor or any other person or entity liable to Counterparty, (d) any right to require Counterparty to apply to any default any security deposit or other security it may hold under the Agreement, (e) any right to require Counterparty to proceed under any other remedy Counterparty may have before proceeding against Guarantor, and (f) any right of subrogation that Guarantor may have against Obligor.

Guarantor does hereby subordinate all existing or future indebtedness of Obligor to Guarantor to the obligations owed to Counterparty under the Agreement and this Guaranty.

Any recovery by Counterparty from any other guarantor or insurer shall first be credited to the portion of Obligor's indebtedness to Counterparty which exceeds the maximum liability of Guarantor under this Guaranty.

The Guarantor hereby represents and warrants that: (i) the Guarantor is duly organized, validly existing and in good standing under the laws of Delaware; (ii) the Guarantor has the requisite corporate power and authority to issue this Guaranty and to perform its obligations hereunder, and has duly authorized, executed and delivered this Guaranty; (iii) the Guarantor is not required to obtain any authorization, consent, approval, exemption or license from, or to file any registration with, any government authority as a condition to the validity of, or to the execution, delivery or performance of, this Guaranty; (iv) as of the date of this Guaranty, there is no action, suit or proceeding pending or threatened against the Guarantor before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations under, or which in any manner questions the validity of, this Guaranty; (v) the execution, delivery and performance of this Guaranty by the Guarantor does not contravene or constitute a default under any statute, regulation or rule of any governmental authority or under any provision of the Guarantor's certificate of incorporation or by-laws or any contractual restriction binding on the Guarantor; and (vi) this Guaranty constitutes

the legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, subject to the effect of any bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

No provision of this Guaranty or right of Counterparty can be waived, nor can Guarantor be released from its obligations hereunder except in a writing signed by Counterparty. This Guaranty shall remain in full force and effect until the date on which all of Obligor's obligations under the Agreement have been completely performed and paid in full or are no longer due or payable.

This Guaranty shall be governed by the laws of the state of ~~Delaware~~New Mexico and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of ~~Delaware~~New Mexico.

If any action is brought by Counterparty against Guarantor under this Guaranty to enforce the obligation of Guarantor hereunder, the unsuccessful party in such action shall pay to the prevailing party therein reasonable attorneys' fees. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

Any notice, demand, protest or request provided for in this Guaranty, or served, given or made in connection with it, will be deemed properly served, given or made: (i) when delivered personally or by prepaid overnight courier, with a record of receipt; (ii) on the fourth day if mailed by certified mail, return receipt requested; or (iii) on the day of transmission, if sent by facsimile or electronic mail during regular business hours or the day after transmission, if sent after regular business hours (provided, however, that such facsimile or electronic mail will be followed on the same day or next business day with the sending of a duplicate notice, demand or request by a nationally recognized prepaid overnight courier with record of receipt), to the persons specified below:

To Guarantor:

With a copy to:

To PNM:

With a copy to:

Guarantor and Counterparty may, at any time or from time-to-time, by written notice to the other, change the designation or address of the person so specified as the one to receive notices pursuant to this Guaranty.

Guarantor may not assign this Guaranty, or assign or delegate any of its rights or obligations hereunder, without the prior written consent of Counterparty, which consent may be granted or withheld in its sole discretion, and any assignment or delegation without such prior written consent shall be null and void and of no force or effect.

This Guaranty shall be binding upon Guarantor, its successors and permitted assigns and shall inure to the benefit of and be enforceable by Counterparty, its successors and assigns. This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof. Any provision of this Guaranty that is prohibited or unenforceable under applicable law shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. The remedies provided in this Guaranty are cumulative and not exclusive of any remedies provided by law or in equity.

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty as of the date and year first above written.

**GUARANTOR:** **[NAME OF GUARANTOR],**

By: _____
Name: _____
Title: _____

## EXHIBIT G

*Notice List*

All Notices are deemed provided in accordance with **Section 17** if made to the physical and email addresses provided below:

~~PUBLIC SERVICE COMPANY OF NEW MEXICO~~

~~FACEBOOK, INC.~~

~~To:~~

~~Public Service Company of New Mexico Attn: Senior Vice President, Regulatory Affairs~~
~~414 Silver Avenue, SW Albuquerque, NM 87102~~

~~To: Facebook, Inc.~~
~~Attn: Bobby Hollis 1 Hacker Way~~
~~Menlo Park, CA 94025~~

~~With copy to:~~
~~Public Service Company of New Mexico Attn: Corporate Secretary~~
~~414 Silver Avenue, SW Albuquerque, NM 87102~~

PUBLIC SERVICE COMPANY OF NEW MEXICO

To:

Public Service Company of New Mexico
Attn: Senior Vice President and CFO
414 Silver Ave. SW
Albuquerque, NM 87102
Henry.Monroy@txnmenergy.com

With copy to:

Public Service Company of New Mexico
Attn: Legal Department
414 Silver Ave. SW
Albuquerque, NM 87102
lawdept@txnmenergy.com

GREATER KUDU, LLC

To:

Greater Kudu, LLC
c/o Meta Platforms, Inc.
Attention: Clean Energy Asset Management
1 Meta Way
Menlo Park, CA 94025
Email: energycontracts@meta.com

With copy to:

Meta Platforms, Inc.
7300 Gateway Blvd
Dock 15
Attn: Associate General Counsel, Energy
Newark, CA 94560

and a copy by email to:
energylegal@meta.com

# EXHIBIT H

*Form of Production Cost Allocation Rider*

PUBLIC SERVICE COMPANY OF NEW MEXICO ELECTRIC SERVICES
1st REVISED RIDER NO. 49 CANCELLING ORIGINAL RIDER NO. 49

PRODUCTION COST ALLOCATION RIDER

EXPLANATION OF RIDER: The purpose of the Production Cost Allocation Rider ("Rider") is to provide for recovery of under-collected production costs from an applicable customer pursuant to the terms and conditions of the Special Service Contract. An under-collection of the customer's allocated production costs will be deemed to occur if the ~~aggregate~~ Actual ~~Capacity Value Factor of~~Production Revenue Requirement Offset resulting from the SSC Resources serving the customer, during the ~~test period~~Test Period of a general rate case, is less than the ~~aggregate Stipulated Capacity Value Factor~~Production Revenue Requirement upon which rates had previously been set.

The Special Service Contract with the customer shall establish a methodology to determine the customer's Contribution to Production Component. Except as provided in the Special Service Contract, service will be furnished subject to the Company's Rules and Regulations and any subsequent revisions. These Rules and Regulations are available at the Company's office and are on file with the NMPRC. These Rules and Regulations are a part of this Schedule as if fully written herein.

TERRITORY: All territory served by the Company in New Mexico.

APPLICABILITY: This Rider shall apply to all customers taking service under Rate No. 36B – Special Service Rate, and Rider No. 47 – Green Energy Rider.

DEFINITIONS: The following definitions shall apply to this Rider:

~~Actual Capacity Value Factor: Average of the actual Resource energy production during each CP Peak Hour in the test year divided by the Resource's nameplate capacity.~~

CP Peak Hours: Coincident peak periods proposed in the Company's general rate case~~s~~ for class allocations ~~are~~ based on anticipated highest demand hours~~, three years' history for rate classes with weather sensitive loads, and base period actuals for rate classes that are not weather sensitive~~.

Coincident Peak Production: The sum of coincident peak production for all SSC Resources ~~for which Stipulated Capacity Value Factors~~that were used in a PNM general rate case utilizing the methodology set forth in the Special Service Contract.

Deemed Under-~~Co~~Al~~eo~~cation: Quantification of the total ~~test period~~Test Period under-allocation and resulting under-collection of production costs for the period starting with the ~~effective~~first date of the ~~Contribution to Production Component set in a~~Test Period from the Company's last rate case and ending with the effective date of ~~the Reset Rate~~new base rates in the subsequent Company's rate case filing.

Reset Rate: ~~New Contribution to Production Component determined by a deemed~~Deemed under- allocation of production costs as defined in the Special Service Contract~~.~~ divided by 12

months and applied monthly to the Customer's bill ($/month).

Interim Period Charge: has the meaning set forth below in the Rate Methodology Section.

SSC Resource: ~~Any renewable~~ means any energy ~~resource,~~generation or ~~any project that can provide~~storage, or capacity, resource contracted with by PNM on Customer's behalf pursuant to ~~serve the customer's needs including but not limited to energy storage, procured by the Company under the terms of~~ the Special Service Contract ~~with the customer~~.

Stipulated Capacity Value Factor: ~~For any Resource with less than three years of historical hourly production data, the~~The effective capacity value for ~~that~~any particular ~~resource~~ SSC Energy Resource stipulated between the Company and the ~~c~~Customer within the Special Service Contract to be used in a Company rate case in lieu of historical hourly production data.

RATE METHODOLOGY: The ~~r~~Rates established under this rider have two components. The first rate component is the Reset Rate. It is ongoing and collects any under allocation determined in the previous rate case. This rate component will remain in effect from the time this rider goes into effect until the effective date of a subsequent rate case where the base rates are reset.

The second component is the Interim Period Charge. It is limited to collect any deemed under allocation experienced from the effective date of the base rates approved in the last rate case through the effective date of this Rider. This rate component will remain in effect for 6 months beginning at the effective date of this Rider.

The two rate components under this Rider shall be established as follows:

1) ~~Within~~For the Reset Rate, within four months of the end of the ~~test period~~Test Period in a general rate case, the Company will compare the ~~Actual Capacity Value Factor to the~~ Production Revenue Requirement as approved in the last rate case to the Production Revenue Requirement Offset. For this comparison, the Production Revenue Requirement Offset will be based on actual production in the Test Period for all of the SSC Energy Resources (except for adjustments to be made due to curtailments of SSC Resources where PNM owes compensation to the seller under the respective Third Party PPA as provided for in Section 8 of the SSC), that used a Stipulated Capacity Value ~~Factor~~as applicable. For all other SSC Energy Resources that have been in service for at least three years as of the date of the filing of the last rate case, PNM will use the same historical average energy production as projected in the last rate case. For SSC Storage Resources, the company will use the same SSC Storage Resource Capacity Value Factor as previously agreed by the Parties for each ~~Resource. If the aggregate Coincident Peak Production of the Resources based on the Actual Capacity Value Factor of each~~respective SSC Storage Resource per the terms of the Special Service Contract. If the Production Revenue Requirement Offset as calculated above is less than the ~~aggregate Coincident Peak Production of the Resources based on the Stipulated Capacity Value Factors upon which rates were set~~Production Revenue Requirement approved in the last rate case, an under-allocation of production costs to the customer will be deemed to occur.

Any Deemed Under-~~Collection will be~~allocation will be calculated for the applicable Test Period on an annual basis and recovered through this Rider in equal monthly amounts ~~for no more than eighteen (18) months.~~until reset to zero upon the effective date of new base rates in the Company's next rate case filing.

~~3) If a Deemed Under-Collection occurs, the Company will determine the Reset Rate as outlined in the Special Service Contract.~~

~~4) If the aggregate Coincident Peak Production of the Resources based on the Actual Capacity Value Factor of each Resource is greater than the aggregate Coincident Peak Production of the Resources based on the Stipulated Capacity Value Factors upon which rates were set or if all Resources have at least three years of history, this Rider will not apply, and the Company shall not recover any amounts from the customer pursuant to this Rider.~~

2) ~~The additional~~ The Interim Period Charge will be based on any deemed under-allocation covering the period between the end of the Test Period and the effective date of the Reset Rate. The Company will bill the Customer and recover this under collection amount as an additional charge included in the Reset Rate, within 6 months of the effective date of such Reset Rate in equal monthly payments, including a carrying charge for any deemed undercollection accrued on a monthly basis equal to the then-current customer deposit rate.

~~5)~~3) Any revenues collected from the ~~c~~Customer due to the Deemed Under-Collection ~~and~~ , including the Reset Rate and the Interim Period Charge will be booked to a regulatory liability and shall be returned to the Company's retail customers in the next general rate case where ratemaking treatment shall be determined by the Commission.

~~6) Amounts collected under this Rider for any Deemed Under-Collection will include a carrying charge at the then-current customer deposit rate.~~

TAX ADJUSTMENT: Billings under this Rider may be increased by an amount equal to the sum of the taxes payable under the Gross Receipts and Compensating Tax Act and all other taxes, fees, or charges (exclusive of ad valorem, state and federal income taxes) payable by the Company and levied or assessed by any governmental authority on the public utility service rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of the service.

TERMS OF PAYMENT: All bills are net and payable within twenty (20) days from the date of bill. If payment for any or all electric service rendered is not made within thirty (30) days from the date the bill is rendered, the Company shall apply an additional late payment charge as defined in Rate 16 Special Charges.

LIMITATION OF RATE: Electric service under this Schedule shall not be resold or shared with others.

## EXHIBIT I

## CTP Offset Principles for SSC Storage Resources

**1.** If the Company proposes, and the NMPRC subsequently approves, a different allocation methodology for production related costs for all retail classes in a future rate case application that affects the calculation of the Production Revenue Requirement and the Production Revenue Requirement Offset, the Parties will negotiate a new approach to replace Exhibit D-1 and to calculate the Contribution To Production Component included in the Special Service Rate and PNM Rider No. 49 – Production Cost Allocation Rider. The Parties also agree to request NMPRC approval of an addendum to the then-effective SSC, to incorporate the new approach.

**2.** The Parties commit to require the resource owner to document the performance of the SSC Storage Resources at the beginning of each calendar year, no later than January 31st, to demonstrate that the storage resource is functioning at a certified rated capacity. The true-up analysis conducted in accordance with PNM Rider No. 49 – Production Cost Allocation Rider, shall, if needed, be adjusted for any change to the physical rated capacity of the SSC Storage Resource.

Greater Kudo, LLC Letter

# PNM Exhibit JCA-4

Is contained in the following 4 pages.

Meta

April 21, 2025

Henry Monroy
Public Service Company of New Mexico
414 Silver Ave SW
Albuquerque, NM 87102

Dear Henry,

I would like to thank you and your PNM colleagues for the continued cooperation and commitment to innovation you have demonstrated throughout our discussions and negotiations over recent months. Together, PNM and Meta are continuing to exemplify what collaboration can look like between an electric utility and its customers. I am proud of what we are accomplishing together to advance economic development, environmental sustainability, grid reliability, and system benefits for all PNM customers.

It is in this spirit that my Meta teammates and I express our full support for PNM's application for approval of additional renewable energy and battery storage resources and the accompanying update to our Special Service Contract (SSC).

Since breaking ground in Los Lunas in 2016, we have completed seven fully operational data center buildings, with three more buildings currently under construction, and are planning further expansion. Along the way, we have remained committed to our corporate goal to support our operations with 100% clean and renewable energy.

These new solar and battery storage projects, the costs of which will be fully paid by Meta (through our wholly owned subsidiary, Greater Kudu LLC), are critical for us to continue to grow in New Mexico and meet our sustainability commitments while bringing benefits to PNM's system and customers. The accompanying updates to the SSC align that agreement with PNM's evolving system needs and the underlying renewable and battery storage contracts.

I am proud of the positive impact that Meta's data center investments have in the communities where we operate, including in Los Lunas. None of this would be possible without our valued partnership with PNM and the support of the NMPRC. Some highlights include:

- We have made direct data center investments in Los Lunas of more than $2.5 billion.
- Construction has resulted in an average of 1,100 skilled trade workers on site daily during peak construction, which is continuing with our ongoing expansion. 85% of these workers are New Mexicans, and 65% of subcontracts have gone to local New Mexico-based companies.
- Once completed, the site will support over 400 operational jobs.
- Contracts for the development of new clean and renewable energy projects across New

Mexico have supported additional investment and job creation in multiple New Mexico communities.

- Since 2019, Meta has provided more than $5 million in direct grant funding to over 115 Valencia County area schools and nonprofits through Meta's Data Center Community Action Grants program and other funding. These grants support local projects that help put the power of technology to use for community benefit, help build strong, sustainable communities, and improve STEAM education – to support the long-term vitality of Valencia County.

Additional information regarding Meta's work in New Mexico is included in the enclosed attachment.

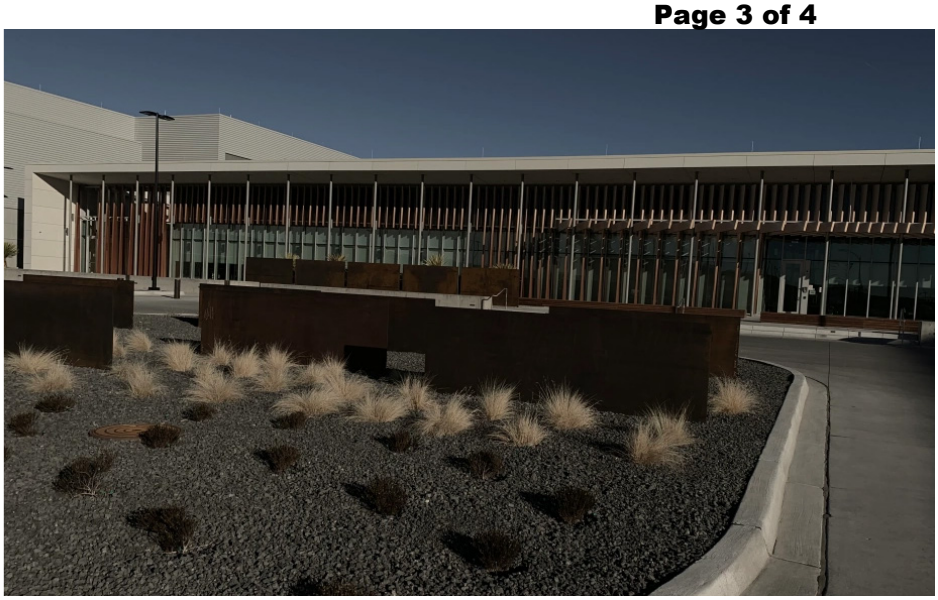
We are excited about this opportunity to spur further economic development in New Mexico, continue our growth in the state, and deepen our integration into our local community, and we greatly appreciate the Commission's and PNM's continued support to enable it.

Sincerely,

Owen Smith

Owen Smith
Energy Manager
Meta

Enclosure



# Meta's Los Lunas Data Center

The Los Lunas Data Center is part of Meta's global infrastructure that brings our technologies and services to life.

**$2.5B+**
Data center investment in New Mexico

**2016**
Broke ground on the Los Lunas Data Center

**400+**
Operational jobs supported once completed

**1,100**
Skilled trade workers on site at peak construction

**$4.9M+**
Direct funding to Valencia County-area schools and nonprofits

**210+**
Grants and sponsorships provided locally since 2019

## We prioritize sustainability

Meta's goal is to be water positive in 2030, where we restore more water than we consume.

Our data centers' electricity use is matched with 100% clean and renewable energy, and our global operations have reached net zero emissions.

Meta-supported projects are adding 885 megawatts of new renewable energy and 100 megawatts of battery storage in New Mexico.

Meta's global fleet of data centers supports our technologies that empower more than 3 billion people around the world to share ideas, offer support and make a difference.

datacenters.atmeta.com

Meta

# Partnering with New Mexico

We are committed to supporting the community through sourcing labor and materials locally where we can, volunteering, partnering with local chambers, and supporting local schools, nonprofits and community projects.

## Supporting local schools and nonprofits

We support the community through our annual Data Center Community Action Grants program and other direct funding for projects that put the power of technology to use for community benefit, give people the power to build strong, sustainable communities, and improve STEAM education.

## Prioritizing sustainability

Meta approaches sustainability from the ground up — from design and construction to operations — by prioritizing energy efficiency and renewable energy, water stewardship, and responsibly managing the end of life of our equipment. Our operational data center buildings achieve LEED® Gold certification by focusing on efficiency, sustainability and innovation. We worked with the Public Service Company of New Mexico (PNM) to meet our 100% clean and renewable energy goal. We support 11 new renewable energy projects and two battery storage projects in New Mexico, and helped create a renewable energy program for other customers looking to meet their renewable energy goals.

## Minimizing water use

We are proud to build some of the most sustainable data centers in the world and prioritize on-site water efficiency.
The Los Lunas Data Center:

- Uses cooling technology that is significantly more water efficient than the industry standard.
- Reuses water numerous times before discharging it as wastewater.
- Is landscaped with native vegetation where possible to reduce irrigation demands.
- Captures and infiltrates rainwater on site.
- Incorporates water-saving fixtures and technologies within data center facilities.

## Water restoration

Our goal is to restore more water to local watersheds in New Mexico than we consume by supporting water restoration and conservation projects led by local community partners, including:

- Amigos Bravos
- Audubon Southwest
- National Forest Foundation
- Rocky Mountain Youth Corps
- Trout Unlimited

facebook.com/LosLunasDataCenter

## We're proud to support community projects led by:

Be Pro Be Proud New Mexico

Belen Consolidated Schools

Belen Public Library

Explora

Friends of Whitfield Wildlife Conservation Area

Los Lunas Public Library

Los Lunas Schools

New Mexico Governor's STEM Challenge

New Mexico Museum of Natural History & Science

Teaching Outdoors to ALL Learners (TOTAL NM)

Teeniors

United Way of North Central New Mexico

University of New Mexico — Valencia Campus

Valencia County Business Incubator

Valencia County Literacy Council

Valencia Shelter Services

Wilderwood

Meta

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

| | | |
|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO.47 AND AMENDED RIDER NO. 49** | ) | **Case No. 25 -00XXX-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO** | ) | |

**AFFIDAVIT**

STATE OF NEW MEXICO )
) ss
COUNTY OF BERNALILLO )

**JULIO C. AGUIRRE, Director, Pricing and Customer Strategy, PNMR Services Company,** upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Julio C. Aguirre,** and it is true and accurate based on my own personal knowledge and belief.

DATED this 13th day of June, 2025.

/s/ Digitally signed by Julio C. Aguirre Date: 2025.06.12 23:02:14 -06'00'

**JULIO C. AGUIRRE**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

| | | |
|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO. 47 AND AMENDED RIDER NO. 49** | ) | **Case No. 25-00048-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO,** | ) | |
| **Applicant.** | ) | |

**DIRECT TESTIMONY**

**OF**

**GARY B. BARNARD**

**June 13, 2025**

**NMPRC CASE NO. 25-00____-UT**
**INDEX TO THE DIRECT TESTIMONY OF GARY B. BARNARD**

**WITNESS FOR**
**PUBLIC SERVICE COMPANY OF NEW MEXICO**


I. INTRODUCTION AND PURPOSE ..... 1

II. METHODOLOGY AND SELECTION PROCESS ..... 4

III. PURCHASE POWER AGREEMENTS ..... 6

IV. ENERGY STORAGE AGREEMENTS ..... 11

V. OTHER KEY PROVISIONS ..... 17

VI. CONCLUSION ..... 19

| | |
|---|---|
| PNM EXHIBIT GBB-1 | Resume of Gary B. Barnard |
| PNM EXHIBIT GBB-2 | Four Mile Mesa Solar Facility Purchase Power Agreement |
| PNM EXHIBIT GBB-3 | Star Light Solar Facility Purchase Power Agreement |
| PNM EXHIBIT GBB-4 | Windy Lane Solar Facility Purchase Power Agreement |
| PNM EXHIBIT GBB-5 | Four Mile Mesa Energy Storage Agreement |
| PNM EXHIBIT GBB-6 | Star Light Energy Storage Agreement |
| PNM EXHIBIT GBB-7 | Windy Lane Energy Storage Agreement |

AFFIDAVIT

**DIRECT TESTIMONY OF**
**GARY B. BARNARD**
**NMPRC CASE NO. 25-00_____-UT**

## I. INTRODUCTION AND PURPOSE

**Q. Please state your name, position, and business address.**

A. My name is Gary B. Barnard. I am Executive Director, Renewable Generation and Contracts for PNMR Services Company ("Services Company") and its affiliates, including Public Service Company of New Mexico ("PNM"). My business address is 2401 Aztec Road NE, Mail Stop MSZ120, Albuquerque, New Mexico 87107.

**Q. Please summarize your educational background and professional qualifications.**

A. My education and professional qualifications are provided in PNM Exhibit GBB-1.

**Q. Have you previously testimony in regulatory proceedings?**

A. Yes. The cases in which I have testified are identified in PNM Exhibit GBB-1.

**Q. What is the purpose of your direct testimony?**

A. The purpose of my testimony is to support PNM's requested approvals of the Purchase Power Agreements ("PPAs") and Energy Storage Agreements ("ESAs"), consistent with the requirements of 17.9.551 NMAC ("Rule 551"). These Agreements are being effectuated in accordance with terms of the Second Amended and Restated Special Service Contract ("Current SSC") and the concurrently filed Third Amended and Restated Special Service Contract ("Restated SSC") between PNM and Greater Kudo, LLC ("Customer"). My testimony will outline the

methodology and selection process for these resources, describe each PPA and ESA, and specifically provide the following information required by Rule 551:

1) copies of the PPAs and the ESAs (Rule 551.8(D)(1));
2) an explanation of the key terms and conditions of the PPAs and ESAs (Rule 551.8(D)(2));
3) a general description of the facilities that are subjects of the PPAs and ESAs (Rule 551.8(D)(5));
4) evidence whether a utility-owned generation resource could have been constructed as an alternative to the PPAs and ESAs with greater benefit to ratepayers (Rule 551.8(D)(9));
5) the methodology and criteria by which the PPAs and ESAs were selected (Rule 551.8(D)(10)); and
6) any other information or evidence that PNM believes will assist the Commission in its review of the PPAs and ESAs (Rule 551.8(D)(11)).

**Q. Please identify the PPAs and ESAs PNM is seeking approval.**

**A.** PNM seeks Commission approval of the following:

1) an agreement between PNM, as Buyer, and Four Mile Mesa Solar, LLC, as Seller, for 100 MW of solar energy from the Four Mile Mesa Solar facility ("FMM Solar");
2) an agreement between PNM, as Buyer, and Star Light Energy Center, LLC, as Seller, for 100 MW of solar energy from the Star Light Energy Center Solar facility ("Star Light Solar");

3) an agreement between PNM, as Buyer, and Windy Lane Energy Center, LLC, as Seller, for 90 MW of solar energy from Windy Lane Energy Center Solar facility ("Windy Lane Solar");
4) an agreement between PNM, as Buyer, and Four Mile Mesa Storage, LLC, as Seller, for 100 MW of four-hour energy capacity from the Four Mile Mesa Storage facility ("FMM Storage");
5) an agreement between PNM, as Buyer, and Star Light Energy Center, LLC, as Seller, for 100 MW of four-hour energy capacity from the Star Light Energy Center Storage facility ("Star Light Storage"); and
6) an agreement between PNM, as Buyer, and Windy Lane Energy Center, LLC, as Seller, for 68 MW of hour-hour energy capacity from the Windy Lane Energy Center Storage facility ("Windy Lane Storage").

Copies of the PPAs and ESAs are attached to my testimony as: (Rule 551.8(D)(1))

- PNM Exhibit GBB-2 – Four Mile Mesa Solar Facility Purchase Power Agreement
- PNM Exhibit GBB-3 – Star Light Solar Facility Purchase Power Agreement
- PNM Exhibit GBB-4 – Windy Lane Solar Facility Purchase Power Agreement
- PNM Exhibit GBB-5 - Four Mile Mesa Energy Storage Agreement
- PNM Exhibit GBB-6 - Star Light Energy Storage Agreement
- PNM Exhibit GBB-7 – Windy Lane Energy Storage Agreement

## II. METHODOLOGY AND SELECTION PROCESS

**Q. Why is PNM seeking approval of the PPAs and ESAs?**

A. Pursuant to 17.9.551.8(A) NMAC, no utility shall become irrevocably obligated under a long-term PPA or ESA without first obtaining the Commission's written approval of the agreement.

**Q. What methodology and criteria did PNM use to select the proposed PPAs and ESAs? (Rule 551.8(D)(10) NMAC)**

A. The methodology and criteria used are those set forth in the SSC. As noted in Section 3 of the Restated SSC, PNM and Customer will collaborate on determining when to bring on additional renewable resources, will identify and evaluate the costs and benefits of proposed renewable resources, and determine sites for resources to avoid constraints on PNM's transmission system. The Customer initiated its own Request for Proposals ("RFP") on April 30, 2024, with bids due on May 31, 2024, seeking renewable resources to meet the needs of its expansion. The Customer also determined the final selection of the requested resources. The timing of the need for these resources contributed to the choice of readily available project sites to meet a projected gap between the Customer's load and the anticipated renewable energy production from all prior renewable energy procurements pursuant to the SSC. PNM, for its part, participated in this process following the Customer's selection of the resources to ensure that they could be added to PNM's system without affecting reliability or causing PNM to add other

generation. PNM and Customer then negotiated agreements with the resources that were acceptable to PNM and Customer, who is ultimately responsible for paying the cost of the renewable energy and storage capacity provided. In this manner, PNM has complied with the terms of the SSC to "work collaboratively, expeditiously and in good faith to ensure that PNM engages in a timely way to 'complete [an] … appropriate process for selecting the provider of the additional Renewable Energy resource."[1]

**Q. Could PNM owned resources have been constructed as alternatives that would have provided greater benefit to the Customer and PNM's other customers? (17.9.551.8(D)(9) NMAC)**

**A.** Not in this instance. As described below, the Customer was involved in the process of choosing the seller and approved the costs of renewable energy in the PPA, as well as the cost of capacity in the ESA. The PPA and ESA proposed here better meet the current needs of the Customer, as defined by the Customer. Therefore, the resources provided a greater benefit to the Customer as a ratepayer. In addition, in accordance with the terms of the SSC and rates approved by the Commission in Case Nos. 16-00191-UT and 18-00269-UT, the Customer is covering the costs of the PPAs and ESAs. PNM Witness Aguirre addresses PNM's recovery of the costs of the agreements in more detail in his direct testimony.

[1] *Second Amended and Restated Special Service Contract*, Section 3.1.3.

## III. PURCHASE POWER AGREEMENTS

**Q. Please describe the terms of each of the three PPAs, including any options to extend. (Rule 551.8(D)(2)(a) NMAC)**

A. The PPAs provide that the projects will sell energy output to PNM over twenty (20) year terms. There are no options to extend the term beyond twenty years. The twenty-year term begins on each respective Commercial Operation Date under the PPAs, which is expected to be December 1, 2026, for Star Light and Windy Lane, and December 31, 2027, for Four Mile Mesa. Commission approval of the PPAs are a condition precedent to the PPAs taking effect. The PPAs are subject to early termination for a number of specified reasons, including default under the PPAs or termination of the Restated SSC, as well as other Events of Default set forth in Article 12 of the PPAs and discussed in more detail later in my testimony.

**Q. What is the nameplate capacity of each PPA facility and the amount of energy PNM will purchase under each individual PPA? (Rule 551.8(D)(2)(b) NMAC)**

A. The combined nameplate capacity of the Solar facilities is approximately 290 MW, and the projects are expected to produce approximately 785,000 MWh of energy per year. Under Section 8.1 of each of the PPAs, PNM is required to purchase net energy generated by the facility and delivered to PNM beginning on the Commercial Operation Date.

- Windy Lane 90 MW capacity 205,000 MWh annually
- Star Light 100 MW capacity 289,000 MWh annually

- Four Mile Mesa 100 MW capacity 289,000 MWh annually

**Q. Please describe the price PNM will pay under each PPA including when charges begin, any price reopeners and any price escalation provisions. (Rule 551.8(D)(2)(c) NMAC)**

**A.** The Solar Energy Output Payment Rate over the twenty-year term of the PPA for each project is below which includes payment for metered energy, capacity, Environmental Attributes, Ancillary Services, and renewable energy certificates ("RECs"). At Commercial Operation Date, the price will remain fixed over the term of each PPAs with no escalations and cannot be reopened. PNM will purchase Test Energy, as defined in the PPAs, at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. The PPAs are pay-for-performance, meaning PNM only pays for the energy actually generated at, and delivered from, the facilities.

- Windy Lane $37.52/MWh
- Star Light $35.87/MWh
- Four Mile Mesa $39.79/MWh

**Q. Do any of the PPAs obligate PNM to pay any fixed or variable administrative costs, transactional, operation and maintenance costs, or any costs other than for delivered energy? (Rule 551.8(D)(2)(d) NMAC)**

**A.** No. Under the PPAs, PNM only pays for energy.

**Q. For all three PPAs, please describe the PPA provisions relating to non-performance and the remedies provided. (Rule 551.8(D)(2)(e) NMAC)**

A. Default by the developers is addressed in Article 12 of the PPAs, including the cure period for each type of default and the remedies. A default becomes an Event of Default if not cured within the applicable cure period, or immediately, if no cure period is specified. Potential Events of Default by the developers under the PPAs include, but are not limited to: (1) the sale, dissolution, or abandonment of the facility; (2) failure by the developers to maintain required security; (3) a developer bankruptcy; (4) failure by the developers to maintain the interconnection to the PNM system; (5) failure to deliver RECs according to the terms of the PPAs on more than three occasions; and (6) failure to make any payment when due. Upon the occurrence of an Event of Default by the developers, PNM may collect damages incurred prior to the termination date as a result of the Event of Default, as well as terminate that PPA and receive a termination payment. Such damages would include the differential between the cost of replacement energy and the Contract Value of the PPAs.

Article 12 also defines Events of Default related to non-performance of the projects Performance-related Events of Default include: (1) the projects failure to achieve the Commercial Operation Date on or prior to the Guaranteed Start Date; (2) the failure of the project to maintain, after the third anniversary of the Commercial Operation Date, an availability percentage of at least eighty percent (80%) over two consecutive Commercial Operation Years; and (3) the failure of the projects to

maintain an availability percentage of fifty percent (55%) over any Commercial Operation Year.

The developers are liable for liquidated damages for non-performance. Article 3.7 requires that, if the Commercial Operation Date has not occurred by the Expected Commercial Operation Date, the developers will pay PNM liquidated damages in an amount equal to one thousand dollars ($1,000) per day for each MW of capacity that is delayed. The developers also must pay liquidated damages if they have not caused all delayed capacity to achieve Commercial Operation by the Guaranteed Start Date. The amount of liquidated damages equals three hundred fifty thousand dollars ($350,000) per MW of capacity shortfall. In accordance with the Restated SSC, proceeds of liquidated damages received by PNM under the PPAs will be used to offset the cost to supply the Customer's load and the equivalent amount of RECs from alternative sources in the event of a delay or failure by the facility to supply energy, capacity, or RECs.

**Q. Please describe each of the facilities that are the subject of each PPA. (Rule 551.8(D)(5)(a), Rule 551.8(D)(5)(c)(ii), (iii), and (iv))**

**A.** Star Light Solar PPA and ESA is a hybrid solar photovoltaic ("PV") generation facility with a net output of 100 MW co-located with a 100 MW 4-hour battery energy storage system ("BESS") interconnecting into the existing Sun Ranch 115 kV substation located along I-25 around mile marker 200 bordering nearby Los Lunas, NM and Belen, NM in Valencia County. The expected Commercial

Operation Date is December 1, 2026. A map showing the location of Star Light solar is included in PNM Exhibit GBB-3.

Four Mile Mesa Solar PPA and ESA is a solar PV generation facility with a net output of 100 MW co-located with a 100 MW 4-hour BESS interconnecting into the existing San Juan 345 kV substation located near the San Juan coal mine north of Waterflow, New Mexico. The expected Commercial Operation Date is December 31, 2027. A map showing the location of Four Mile Mesa solar is included in PNM Exhibit GBB-2.

Windy Lane Solar PPA and ESA is a hybrid solar PV generation facility with a net output of 90 MW co-located with a 68 MW 4-hour BESS interconnecting behind a shared point of interconnection ("POI") with an existing wind generating facility known as Casa Mesa. Casa Mesa is located North of PNM 345 kV substation Taiban Mesa which is the POI of the project. Taiban Mesa is located in a very rural location along NM-252 14 miles northeast of Fort Sumner, New Mexico the county seat of De Baca County, where the project is located. The expected Commercial Operation Date is December 1, 2026.

The Commercial Operation Dates for each of these facilities reflects a construction timeframe consistent with regulatory approval by December 31, 2025.

**Q. Are there any approvals or permits required to construct and operate the projects subject to any of the three PPAs? (Rule 551.8(D)(5)(c)(i))**

**A.** Yes. The developers are required to get all necessary permits. The required permits and approvals, which the developers are responsible for obtaining, are listed in

Exhibit E to each of the PPAs, which are attached as PNM Exhibits GBB-2, GBB-3 and GBB-4.

**Q. Do any of the three PPAs provide for PNM acquiring ownership of their respective projects during or after the term of the agreement? (Rule 551.8(D)(5)(c)(v))**

**A.** No. PNM does not have a purchase option under these agreements.

**Q. How will the energy from each of the three PPA projects be transmitted on PNM's system?**

**A.** The facilities will utilize the same interconnection agreements and points of interconnection as described by PNM Witness Jenkins. He provides the details of interconnection and transmission facilities necessary to connect the facilities to PNM's existing facilities.

## IV. ENERGY STORAGE AGREEMENTS

**Q. Please describe the terms of each of the three ESAs, including any options to extend. (Rule 551.8(D)(2)(a))**

**A.** The ESAs provide that the developers will provide availability from the BESS facilities to PNM over a twenty (20) year term. There are no options to extend the term beyond twenty years. The twenty-year term begins on the Commercial Operation Date under the ESAs, which is expected to be December 1, 2026, for

Star Light and Windy Lane and December 31, 2027, for Four Mile Mesa. Commission approval of the ESAs is a condition precedent to each ESA taking effect. The ESAs are subject to early termination for a number of specified reasons, including: default under the ESAs or termination of the SSC, as well as other Events of Default set forth in Article 12 of the ESAs and discussed in more detail later in my testimony.

**Q. What is the nameplate capacity of each ESA facility, and the amount of available energy storage that PNM will purchase under each individual ESA? (Rule 551.8(D)(2)(b))**

**A.** The nameplate capacity of the Storage facilities is approximately 268 MW of 4-hour storage, and the projects are expected to be available for approximately 2.2 million hours (268 * 8,760 * 95%) of available battery storage per year. Under Section 8.1 of the ESAs, PNM is required to purchase net available hours by the facilities available to PNM beginning on the Commercial Operation Date.

-Windy Lane 68 MW capacity 565,000 hours of available energy storage annually.

-Star Light 100 MW capacity 832,000 hours of available energy storage annually.

-Four Mile Mesa 100 MW capacity 832,000 hours of available energy storage annually.

**Q. Please describe the price PNM will pay under each ESA including when charges begin, any price reopeners and any price escalation provisions. (Rule 551.8(D)(2)(c))**

**A.** The ESA Payment Rate over the twenty-year term of the ESA for each project is below which includes payment for availability, capacity, Environmental Attributes, Ancillary Services, and RECs. This price will remain fixed over the term of the ESA with no escalations and cannot be reopened. The ESAs are pay-for-performance, meaning PNM only pays for the actual storage availability delivered from the facilities. Ultimately, and pursuant to the Restated SSC, these prices are passed through to the Customer.

- Windy Lane $19.91/available hour of energy storage per MW of capacity.
- Star Light $19.32/available hour of energy storage per MW of capacity.
- Four Mile Mesa $21.25/available hour of energy storage per MW of capacity.

**Q. Do any of the three ESAs obligate PNM to pay any fixed or variable administrative costs, transactional, operation and maintenance costs, or any costs other than for delivered energy? (Rule 551.8(D)(2)(d))**

**A.** No. Under the ESAs, PNM only pays the one fixed charge for all Energy Storage Services, Ancillary Services, and Future Environmental Attributes.

**Q. For all three ESAs, please describe the ESA provisions relating to non-performance and the remedies provided. (Rule 551.8(D)(2)(e))**

**A.** Default by the developers is addressed in Article 12 of the ESAs, including the cure period for each type of default and the remedies. A default becomes an Event of Default if not cured within the applicable cure period, or immediately, if no cure

period is specified. Potential Events of Default by the developers under the ESAs include, but are not limited to: (1) the sale, dissolution, or abandonment of the facility; (2) failure by the developers to maintain required security; (3) a developer bankruptcy; (4) failure by the developers to maintain the interconnection to the PNM system; and (5) failure to make any payment when due. Upon the occurrence of an Event of Default by the developers, PNM may collect damages incurred prior to the termination date as a result of the Event of Default, as well as terminate the ESAs and receive a termination payment. Such damages would include the differential between the cost and the Contract Value of the PPAs.

Article 12 also defines Events of Default related to non-performance of the projects Performance-related Events of Default include: (1) the projects failure to achieve the Commercial Operation Date on or prior to the Guaranteed Start Date; (2) the failure of the project to maintain, after the Commercial Operation Date, an availability percentage of at least eighty-five percent (85%) over two consecutive Commercial Operation Years; and (3) the project fail to achieve ninety percent (90%) of the Guaranteed ESS Capacity during annual performance testing conducted.

The developers are liable for liquidated damages for non-performance. Article 3.7 provides that, if the Commercial Operation Date has not occurred by the Expected Commercial Operation Date, the developers will pay PNM liquidated damages in an amount equal to one thousand dollars ($1,000) per day for each MW of capacity that is delayed. The developers also must pay liquidated damages if they have not caused all delayed capacity to achieve Commercial Operation by the Guaranteed

Start Date. The amount of liquidated damages equals three hundred fifty thousand dollars ($350,000) per MW of capacity shortfall. In accordance with the Restated SSC, proceeds of liquidated damages received by PNM under the ESAs will be used to offset the cost to supply the Customer's load and the equivalent amount of RECs from alternative sources in the event of a delay or failure by the projects to supply energy, capacity, or RECs.

**Q. Please describe each of the facilities that are the subject of each ESA. (Rule 551.8(D)(5)(a), Rule 551.8(D)(5)(c)(ii), (iii), and (iv)).**

**A.** Star Light Solar PPA and ESA is a hybrid solar PV generation facility with a net output of 100 MW co-located with a 100 MW 4-hour BESS interconnecting into the existing Sun Ranch 115 kV substation located along I-25 around mile marker 200 bordering nearby Los Lunas, New Mexico and Belen, New Mexico in Valencia County. The expected Commercial Operation Date is December 1, 2026. A map showing the location of Star Light solar is included in PNM Exhibit GBB-3.

Four Mile Mesa Solar PPA and ESA is a solar PV generation facility with a net output of 100 MW co-located with a 100 MW 4-hour BESS interconnecting into the existing San Juan 345 kV substation located near the San Juan coal mine north of Waterflow, New Mexico. The expected Commercial Operation Date is December 31, 2027. A map showing the location of Four Mile Mesa solar is included in PNM Exhibit GBB-2.

Windy Lane Solar PPA and ESA is a hybrid solar PV generation facility with a net output of 90 MW co-located with a 68 MW 4-hour BESS interconnecting behind a

shared POI with an existing wind generating facility known as Casa Mesa. Casa Mesa is located North of PNM 345 kV substation Taiban Mesa which is the POI of the project. Taiban Mesa is located in a very rural location along NM-252 14 miles northeast of Fort Sumner, New Mexico the county seat of De Baca County, where the project is located. The expected Commercial Operation Date is December 1, 2026.

The Commercial Operation Dates for each of these facilities reflects a construction timeframe consistent with regulatory approval by December 31, 2025.

**Q. Are there any approvals or permits required to construct and operate the projects subject to any of the three ESAs? (Rule 551.8(D)(5)(c)(i))**

**A.** Yes. The developers are required to get all necessary permits. The required permits and approvals, which the developers are responsible for obtaining, are listed in Exhibit E to each of the ESAs which are attached as PNM Exhibits GBB-5, GBB-6 and GBB-7.

**Q. Do any of the three ESAs provide for PNM acquiring ownership of their respective projects during or after the term of the agreement? (Rule 551.8(D)(5)(c)(v))**

**A.** No, PNM does not have a purchase option under these agreements.

**Q. How will the energy from each of the three ESA projects be transmitted on PNM's system?**

**A.** The facilities will utilize the same interconnection agreements and points of interconnection as described by PNM Witness Jenkins. He provides the details of interconnection and transmission facilities necessary to connect the facilities to PNM's existing facilities

## V. OTHER KEY PROVISIONS

**Q. Please describe the other provisions in each of the three PPAs and three ESAs that provide operational or other benefits. (Rule 551.8(D)(11))**

**A.** The PPAs each include a specific ramp rate of not greater than 10 MW per minute and curtailment rights for the solar facility for reasons that include transmission and system management.

In addition to the system benefits provided under the PPAs and ESAs, Article 19 of each agreement requires the seller to post security, which increases the monetary incentive for the seller to meet its capacity and schedule requirements.

For each of the agreements, the developers are required to post and maintain $100,000 per MW multiplied by the Guaranteed Solar or Storage Capacity within the earlier of: 1) ninety days after the Execution Date, or 2) the commencement of construction of the project. Additionally, no later than the Commercial Operation Date, the developers will be required to post and maintain security for the entire

term equal to $125,000 per MW multiplied by the Guaranteed Solar or Storage Capacity.

The ESAs include Ancillary Services including frequency response of 50 MW per 0.1 Hertz, load following, and 50 MW per second charge/discharge ramping capability. Furthermore, PNM will have dispatch control of the ESA within a 365 cycle per year limitation.

**Q. Are any of the three PPAs or three ESAs conditioned upon Commission approval of the Restated SSC?**

**A.** Yes, each of the PPAs and ESAs are conditioned upon Commission approval of the Restated SSC.

**Q. Under the terms of any of the three PPAs or three ESAs, would PNM be obligated to continue to purchase from these facilities should the Restated SSC with customer be cancelled?**

**A.** No. Pursuant to both the PPAs and the ESAs, PNM has the right to terminate should the Restated SSC be cancelled for any reason other than a PNM event of default.

**Q. Do you have any further comments about the PPAs and ESAs?**

**A.** Yes. In general, the terms and conditions in the PPAs and the ESAs are typical and market-based. Similar terms and conditions are generally found in any long-term PPAs or ESAs entered into by PNM, including those approved in prior cases and

those involving resource procurements pursuant to the SSC. Given the fact that PNM is entering into the PPAs and ESAs pursuant to the terms of the Current and Restated SSC with the Customer and that no other PNM retail customers will be responsible for costs incurred by PNM under the PPAs or ESAs, the terms of the PPAs and ESAs should be deemed reasonable and approval should be granted.

## VI. CONCLUSION

**Q. Does this conclude your direct testimony?**

**A.** Yes.

*GCG#533859*

Resume of Gary B. Barnard

# PNM Exhibit GBB-1

Is contained in the following 3 pages.

GARY B. BARNARD
2401 Aztec Road NE
Albuquerque, NM 87107
(505) 241-2854
email: gbarnar@pnm.com

## ACCOMPLISHMENTS

- Developed, managed, sourced, and installed approximately 500MW of utility scale solar projects totaling approximately $950M on schedule and budget.
- Manage the operations and maintenance of 26 solar plants located across the State of NM.
- Responsible for all aspects of the construction of a 40MW gas plant for $60M near Belen NM.
- Direct the contract process for renewable contracts, construction contracts, and maintenance contracts for generation development including the bidding process.
- Developed and implemented Supply Chain planning, infrastructure, metrics, policies, and processes.
- Directed the development and implementation of enterprise wide benchmarks, metrics, and system infrastructure.
- Sourced, identified and captured $3 million in savings from fleet and corporate indirects off a spend amount of $13 million

## WORK EXPERIENCE

**EXECUTIVE DIRECTOR OF STRATEGIC ENERGY DEVELOPMENT, RENEWABLES AND CONTRACTS**, PNMR, Albuquerque, NM 2010-Present
Develops the renewable strategies with a primary focus on solar. Responsible for Facebook renewable relationship including solar construction and wind PPAs. Manage PNM's affiliate renewable activities including solar and partnership development. Directs the generation development organization including utility scale solar generation, gas plant generation, wind and geothermal contracts, Palo Verde Nuclear plant relationships, and the maintenance and operations of the solar facilities. Manage all aspects of solar and gas generation and construction including site identification, technology assessment, environmental compliance, safety, public affairs, sourcing, interconnections, contract negotiations, project management, construction and maintenance. Currently constructing or have completed 137MW of solar at a total cost of approximately $340M. All projects were brought in on budget and schedule. Additionally, constructed a 40MW LM 6000 gas peaking unit. Responsible for wind and geo-thermal contracts in excess of $100M. Responsible for all aspects of renewable and gas generation.

**DIRECTOR OF SUPPLY CHAIN CAPABILITIES DEVELOPMENT**, PNMR, Albuquerque, NM 2006-2010.
Directed and developed the support services for the Supply Chain organization. These include: technology and systems infrastructure development, fleet and warehouse financial tracking, metrics, benchmarking, data cube, policies, procedures, processes, program management, financial analysis, budgeting, strategic planning and compliance. Supported the development of the centralized supply chain model. Developed job descriptions, interviewed candidates and set up structure for the new organization. Developed draft goals, targets, and operating plan for the organization. Responsible for developing, implementing and ensuring compliance of organizational policies, procedures, processes, systems, and reporting that span the entire organization. Directly managed key managers and responsible for performance management of the entire group. Provided reporting, metrics and benchmarks. Responsible for the strategic and operating plans of the organization. Managed the enterprise wide shared service analytics, benchmarks and metrics tracking.

**DIRECTOR OF CORPORATE PROCUREMENT/CONTRACTS/A/P/PR,** PNMR, Albuquerque, NM 2003-2006.
Implemented a review of corporate spend and began to update PNMR's procurement process. Sourced and negotiated new contracts with vendors and drove over $3m in savings in several areas of spend including fleet, cell phones, transportation, pagers, office supplies, and others. Created a company wide council of the procurement organizations to begin standardization of processes and savings opportunities. Implemented new processes and tools to standardize critical purchasing and payment functions. Managed the A/P and P/R functions and was able to reduce FTEs and improve process. Responsible for the management and performance of a group in excess of forty individual contributors.

**DIRECTOR STRATEGIC PLANNING, IT, & ACCOUNTING SERVICES**, BULK POWER SERVICES (subsidiary of Public Service Company of NM), Albuquerque, NM 1999-2003
Promoted to Controller of the new business unit of PNM in 1999, and became responsible for strategic planning and IT in 2000. Responsibilities included: directing the development of the business unit's strategic plan, which consisted of over $1 billion in incremental investments over a five year period, and tracking its implementation. Responsible for all the financial and managerial accounting for an organization that has over $1 billion in revenue, $1.4 billion in assets and over $100 million in net income in 2001. Directed the budget process for the unit, which includes an operating budget in excess of $200 million and a capital budget in excess of $150 million. Managed the development of a financial and accounting group consisting of more than thirty five professionals. Recommended business structures for new organization. Responsible for the business unit's IT strategy and final implementation of a $6 million software accounting system.

**DIRECTOR OF MARKETING**, **BUSINESS DEVELOPMENT, RATES, TRANSPORTATION, AND NATURAL GAS VEHICLE**S, PNM GAS SERVICES, Albuquerque, NM 1995-1999
Working existing marketing personnel, developed a dedicated commissioned sales force. Increased revenue by over $2.6 million with only five salespeople in one year. Created new product development group that developed and proposed several new products associated with the existing business. Developed and implemented tracking, forecasting, and rewards systems. Additional responsibilities of Rate department and Transportation department added to group after initial success. Designed and implemented new market based rates for natural gas vehicles and gas transportation, and this allowed for opportunities for revenue growth with existing assets. Responsible for a group of 50 contributors. Researched and negotiated corporate alliances for parent.

**MANAGER OF BUSINESS PLANNING**, PNM GAS SERVICES, Albuquerque, NM 1994-1995
Developed new plans that enhanced market penetration, focus and profitability. Product plans concentrated on immediate opportunities like water pumping, cogeneration, natural gas air conditioning, and others. Developed an updated natural gas vehicle business plan that focused on increasing returns and lowering capital expenditures by several million dollars.

**SENIOR MANAGER OF BUSINESS PLANNING,** BELLSOUTH ENTERPRISES, Atlanta, GA 1992-1994
Researched new business opportunities for BellSouth Enterprises including: Cable acquisitions, Electronic Commerce, Interactive Video, Video Dial Tone, Transactional Advertising, and Messaging Services. Developed marketing and product plans for new and existing products and services and tracked financial and market performance. Forecasted expenses and usage information for new entities. Prepared presentations on opportunities supporting the strategic direction of information services.

**FINANCIAL MANAGER,** BELLSOUTH INFORMATION SYSTEMS (BIS), Atlanta, GA 1991-1992.
Responsible for all pricing/planning/financial activities for BIS. Supervised the pricing, costing, budgeting, and billing for this $80 million subsidiary.

**PRICING/MARKETING MANAGER,** BELLSOUTH INFORMATION SYSTEMS, Atlanta GA. 1988-1991
Set prices for all the company's products. Forecasted revenue growth, product lines sales, and resource requirements. Projected financial performance of products and company Worked with Marketing Vice President in the design of the marketing organization. Developed marketing strategies for major lines of business.

## EDUCATION

MBA, EMORY UNIVERSITY, Atlanta, GA 1988

- GPA 3.74 on 4.0 scale
- Merit Fellowship
- Beta Gamma Sigma (Business Honor Society)
- CPSM (Certified Professional in Supply Management) Certification Pending

BA, POLITICAL SCIENCE, UNIVERSITY OF NEW MEXICO, Albuquerque, NM 1986

- GPA 3.83 on 4.0 scale
- Phi Beta Kappa
- Summa Cum Laude
- Merit Fellowship

## CERTIFICATIONS/SKILLS

Certified Professional in Supply Management (CPSM)
Member Institute for Supply Management (ISM)
Member Utility Purchasing Management Group (UPMG)
Project Management

Four Mile Mesa Solar Facility Purchase Power Agreement

# PNM Exhibit GBB-2

Is contained in the following 164 pages.

# POWER PURCHASE AGREEMENT

# FOUR MILE MESA SOLAR FACILITY

**by and between**

# PUBLIC SERVICE COMPANY OF NEW MEXICO

**and**

**FOUR MILE MESA SOLAR, LLC**

**Dated as of May 29, 2025**

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Exhibit Q Form of Estoppel Certificate

POWER PURCHASE AGREEMENT——**FOUR MILE MESA SOLAR FACILITY**

This Power Purchase Agreement—FOUR MILE MESA SOLAR FACILITY, as may be amended from time to time, is entered into this 29TH Day of May, 2025 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Four Mile Mesa Solar, LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 575 Fifth Avenue, Floor 24, New York, NY 10017. Buyer and Seller may be referred to in this PPA individually as a "**Party**" and collectively as the "Parties."

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission; and

WHEREAS, Seller desires to develop, design, construct, own and operate a solar energy electric generating facility with an expected total maximum power output of approximately One Hundred (100) $MW_{AC}$ ("**Project**"), as further defined herein and in Exhibit A; and

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (as amended from time to time, "**Special Service Contract**"), between Buyer and Greater Kudu LLC ("**Retail Customer**"), as amended from time to time, Buyer has agreed, by entering into this PPA, to procure the Energy from the Project to serve Retail Customer's load; and

WHEREAS, Seller desires to generate, sell and deliver to Buyer the Energy generated by the Project and any and all associated or correlative Renewable Energy Certificates and other Environmental Attributes, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this PPA; and

WHEREAS, Buyer and Seller intend to enter into a certain Energy Storage Agreement, pursuant to which some of the Energy shall be exclusively used in Seller's Energy Storage System, and for which Buyer shall purchase the Energy Storage Product,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

## ARTICLE 1
## Definitions and Rules of Interpretation

1.1 Definitions. The following terms have the meanings set forth herein.

"**Abandonment**" means (a) prior to the Commercial Operation Date, a cessation of work and operations at or in respect of the Project for more than ninety (90) consecutive Days by Seller or Seller's contractors but only if such cessation is not in accordance with Prudent Utility Practices, caused by a Force Majeure Event, caused by a Buyer Event of Default or is not in accordance with Seller's Project Schedule; or (b) after the Commercial Operation Date, the permanent relinquishment of possession and control of the Project (or any material portion

thereof) by Seller, other than a transfer permitted under this PPA.

"**AC**" means alternating electric current.

"**Accounting Standards**" has the meaning set forth in Section 22.18.

"**Additional Consents**" means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this PPA that are required from any Governmental Authority with respect to the Project.

"**AD/CVD**" means antidumping and/or countervailing duty.

"**Adjustment Cutoff Date**" means the beginning of the Test Period.

"**Affiliate**" of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity, excluding any Tax Equity Investor. For purposes of this definition, the term "control" (including the terms "controls," "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise.

"**After Tax Basis**" means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment ("**Base Payment**") supplemented by a further payment ("**Additional Payment**") to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

"**AGC**" stands for "**Automatic Generation Control**" and means energy management system equipment that automatically adjusts the generation quantity of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

"**Ancillary Services**" means operating reserves, frequency regulation, reactive supply, voltage control, frequency response, contingency reserves, and other products associated with electric generation and Energy, each to the extent that the Project is capable of providing such services.

**"Annual Generation Forecast"** means the forecasts of generation from the Project set

forth on Exhibit L.

"**Annual Performance Test**" has the meaning set forth in Section 10.8(B).

"**Annual Performance Test Guarantee**" has the meaning set forth in Section 10.9(A).

"**Annual Performance Test Guarantee Damages**" has the meaning set forth in Section 10.9(C).

"**Annual Performance Test Guarantee Ratio**" has the meaning set forth in Section 10.9(A).

"**Annual Performance Test PVSYST Model**" has the meaning set forth in Section 10.8(D)(8).

"**Anything of Value**" includes, but is not limited to, cash or a cash equivalent (including "grease," "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

"**Applicable Law**" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, applicable to this PPA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"**Attestation and Bill of Sale**" has the meaning set forth in Section 9.1(C).

"**Back-Up Metering**" has the meaning set forth in Section 5.3(A).

"**Balancing Area**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Balancing Area Authority**" or "**BAA**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

"**Business Day**" means any calendar Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

"**Buyer**" has the meaning set forth in the Preamble, and acts herein in its merchant function capacity.

"**Buyer Commissioning Delays**" has the meaning set forth in Exhibit O.

"**Buyer Costs**" means brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or entering into new arrangements which replace this PPA; and all reasonable attorneys' fees and expenses incurred by Buyer in connection with the termination of this PPA, to the extent such costs are not already included in Replacement Energy Costs.

"**Buyer-Requested Performance Tests**" has the meaning set forth in Section 10.10.

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement Energy Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value; provided that if (b)(i) is less than (b)(ii), then zero, plus (c) any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs, Environmental Attributes and any Future Environmental Attributes that are currently available pursuant to this PPA as of the date of termination of this PPA, Seller acknowledging that Buyer entered into this PPA for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes and any Future Environmental Attributes; plus (d) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. The Buyer Termination Payment does not include consequential, punitive, exemplary or indirect or business interruption damages.

"**CAISO**" means the California Independent System Operator Corporation and any successor entity.

"**CAISO Tariff**" means the CAISO Open Access Transmission Tariff that has been filed with an accepted by FERC, as may be amended from time to time.

"**Capacity Shortfall Damages**" has the meaning set forth in Section 3.8.

"**Change in Law**" means the occurrence, after the Execution Date, of any of the following: (a) the adoption or taking effect of any law, tax law, rule, regulation, order or treaty; (b) any repeal of or other change in any law, tax law, rule, regulation, order or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"**Change of Control**" means, with respect to Seller, any transaction or series of transactions following which Seller's Parent Entity no longer directly or indirectly (i) remains the owner of more than fifty percent (50%) of the direct or indirect equity or voting interests of Seller (without regard to unforeclosed-upon pledges to Seller's Lenders or interests held by any Tax Equity Investors in connection with a Tax Equity Financing), or (ii) retains the power to control the management and policies of Seller; provided that Change of Control will exclude any Seller Permitted Transfer.

"**Commercial Operation**" means when the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) Solar

Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) all Seller required permits, required consents and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect, (c) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for the interconnection and delivery of Energy to the Point of Delivery in an amount at least equivalent to ninety percent (90%) of the Guaranteed Solar Capacity and is not in material breach of its Interconnection Agreement, (d) Seller has satisfactorily completed all of the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures (e) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement, (f) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this PPA, and (g) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

"**Commercial Operation Date**" means the date on which all of the following have occurred: (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10, (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation Notice**" has the meaning set forth in Section 3.10.

"**Commercial Operation Year**" means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

"**Commissioning Performance Test**" has the meaning set forth in Section 10.8(A) with such test detailed in Exhibit F and required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

"**Commissioning Readiness Review Meeting**" has the meaning set forth in Exhibit O.

"**Commissioning Tests**" has the meaning set forth in Section 10.2 as further defined in Exhibit F.

"**Commissioning Kickoff Meeting**" has the meaning set forth in Section 3.1 of Exhibit O.

"**Compensable Curtailment**" means any curtailment of the Project, that is not a Reliability Curtailment to the extent such curtailment during a Commercial Operation Year has exceeded five percent (5%) of the Annual Generation Forecast for the same Commercial Operation Year.

"**Confidential Information**" has the meaning set forth in Section 22.14(C).

"**Contract Value**" means the sum of the present values of the payments for Solar Energy Output, for each Commercial Operation Year (or portion thereof) in the then-remaining term, (determined without reference to the early termination), which annual amount is equal to (a) the quantity of Metered Output and RECs expected to be produced during such Commercial Operation Year (or portion thereof) times (b) the Solar Energy Output Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Counteracting Savings Notice**" has the meaning set forth in Section 3.12(D).

"**Creditworthy**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Data Breach**" has the meaning set forth in Section 22.14(F).

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

"**Deemed Energy**" has the meaning set forth in Section 4.1(A).

"**Default Rate**" has the meaning set forth in Section 9.4.

"**Defaulting Party**" means the Party with respect to which an Event of Default under Article 12 has occurred.

"**Delay Damages**" has the meaning set forth in Section 3.7.

"**Delayed Capacity**" has the meaning set forth in Section 3.7.

"**Delivery Term**" has the meaning set forth in Section 7.1.

"**Delivery Term Security**" has the meaning set forth in Section 19.1.

"**Development Security**" has the meaning set forth in Section 19.1.

"**Disclosing Party**" has the meaning set forth in Section 22.14(A).

"**Dispute Notice**" has the meaning set forth in Section 13.8.

"**Disputing Party**" has the meaning set forth in Section 9.5(A).

"**Dollars**" means the lawful currency of the United States of America.

"**DOT**" means a Dispatch Operating Target as such term is further defined in the CAISO Tariff.

"**Downgrade Event**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is not as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Early Termination Date**" has the meaning set forth in Section 12.4.

"**EDAM**" means the Extended Day-Ahead Market, an extension of CAISO's existing day-ahead energy market, that will be offered to participants outside of the CAISO balancing authority area to participate in day-ahead trading, and which is expected to launch in Q2 2026.

"**EIM**" means the Western Energy Imbalance Market, an energy-only real-time market operated by CAISO and offered to western participants outside of the CAISO balancing authority area, where such participants can voluntarily determine how their transmission and generation resources engage in the market.

"**Electric Interconnection Point**" means the Point of Delivery.

"**Electric Metering Device(s)**" means all metering and data processing equipment used to measure, record, or transmit data relating to the Solar Energy Output generated by the Project. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering including the metering current transformers and the metering voltage transformers.

"**Eligible Change in Tariff**" means any change in Applicable Law, new interpretation of existing Applicable Law or action by a Governmental Authority occurring after April 2, 2025, that (a) imposes on Seller or Seller's Affiliates with respect to the importation of Imported Equipment into the United States any duty (including AD/CVD), tariff, import tax, or other similar import fee or cost that becomes effective after, or the enforcement of which commences after, April 2, 2025, or (b) increases the applicable rate of any of the foregoing which becomes effective after April 2, 2025, to the extent affecting Imported Equipment.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, generated by the Project and delivered to Buyer at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices, net of auxiliary loads, station

electrical uses and appropriate line losses.

"**Energy Shortfall**" has the meaning set forth in Section 10.9(B).

"**Energy Storage Agreement**" means that certain Energy Storage Agreement between Four Mile Mesa Storage, LLC and Buyer dated as of May 29, 2025 relating to the ESS, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

"**Energy Storage Product**" has the meaning ascribed to the term "Product" in the Energy Storage Agreement.

"**Energy Storage System**" or "**ESS**" has the meaning ascribed to it in the Energy Storage Agreement. The Energy Storage System is being developed concurrently and jointly with the Project and may share certain equipment, buildings, and facilities, including transformers, Interconnection Facilities, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate, with the Project.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include (A) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States Environmental Protection Agency or other governmental agencies, (B) any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act, (C) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, (D) credits, benefits or allowances resulting from the compliance of the Project or Project Energy with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes include all RECs, any and all aspects of a REC, and the exclusive right to claim the additionality, or "but for cause", of such Projects' development and commercial operation, (E) all WREGIS Certificates as defined by the WREGIS Operating Rules and (F) those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on

Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project's generation of electricity. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; (iii) any Energy, reliability or other power attributes from the Project, (iv) matters designated by Buyer as sources of liability, and (v) any adverse wildlife or environmental impacts.

"**Environmental Contamination**" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this PPA.

"**Event of Default**" means a Seller Event of Default as set forth in Section 12.1 or a Buyer Event of Default as set forth in Section 12.2.

"**Excused Delay**" means any of the following: (a) Force Majeure, (b) Interconnection Delay, (c) an Import Restraint, as provided in Section 3.12, or (d) any delay in obtaining Lease Approval, to the extent in each case (i) not caused by an act or omission of Seller, (ii) occurring despite Seller's exercise of Prudent Utility Practices, (iii) not reasonably foreseeable, and (iv) beyond the reasonable control of, and not caused by the negligence or lack of due diligence of, Seller or its contractors or suppliers.

"**Execution Date**" has the meaning set forth in the Preamble.

"**Expected Commercial Operation Date**" has the meaning set forth in Section 3.1.

"**Express Contingency Notice**" has the meaning set forth in Section 3.12.

"**Express Contingency Termination Payment**" means a termination amount equal to $5,000,000.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**Fitch**" shall mean Fitch Ratings Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

"**Force Majeure Event**" has the meaning set forth in Section 14.1.

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on the Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date.

"**GAAP**" has the meaning set forth in Section 22.18.

"**Government Official**" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

"**Governmental Approval**" means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of renewable energy and Renewable Energy Certificates and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation with regard to any Non-Governmental Compliance Obligations.

"**Governmental Authority**" means any applicable federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"**Governmental Charges**" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of Solar Energy Output contemplated by this PPA, either directly or indirectly.

"**Gross Receipts Taxes**" means any New Mexico state and local sales taxes, gross receipts taxes and similar taxes and charges.

"**Guaranteed Solar Capacity**" has the meaning set forth in Section 3.1.

"**Guaranteed Start Date**" has the meaning set forth in Section 3.1.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d)

polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" has the meaning set forth in Section 1.4.

"**Imported Equipment**" means solar photovoltaic cells, photovoltaic modules, inverters, step-up transformers, and structures (including towers and racking) intended to be imported into the United States from foreign destinations for the Project.

"**Import Restraint**" means any withhold release order or other law, rule, or regulation, including the Uyghur Forced Labor Prevention Act, or any action of a Governmental Authority under any such order, law, rule, or regulation, that imposes additional waiting time for Seller to receive Imported Equipment from foreign destinations, or prevents or delays the import or release of any Imported Equipment into the United States.

"**Installed Solar Capacity**" means, as of a given point in time, the aggregate nameplate capacity of all Solar Units installed and commissioned at the Project.

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended, amended and restated, modified, replaced or otherwise supplemented from time to time.

**"Interconnection Delay"** means the Transmission Provider's delay of the In-Service Date (as may be extended from time-to-time pursuant to and as defined in the Interconnection Agreement, or an analogous date, to the extent the Interconnection Agreement is amended or replaced) beyond the schedule set forth in the Interconnection Agreement (including delay in setting the In-Service Date, other than due to the failure of the Interconnection Agreement to come out of suspension) in completing construction of the Interconnection Facilities or upgrades to the Transmission Provider's Transmission System related to, and required pursuant to the Interconnection Agreement for the interconnection of the Project, but only to the extent that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, including Seller's failure to complete its obligations under the Interconnection Agreement as needed to ensure timely completion and operation of such Interconnection Facilities.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities as defined and set forth in the Interconnection Agreement (or an analogous term, to the extent the Interconnection Agreement is amended or replaced).

"**Issuer Minimum Requirements**" has the meaning set forth in Section 19.2.

"**ITC(s)**" means the investment tax credits established pursuant to Section 48 or Section 48E of the Code, as such law may be amended or superseded.

"**kW**" means one or more kilowatts AC of electricity, as the context requires.

"**kWh**" means kilowatt hour AC.

"**Lease Approval**" means, with respect to that certain Solar Energy Facility Business Lease Agreement, dated effective as of February 27, 2024, by and between Ute Mountain Ute Tribe and Foxtail Flats Solar, LLC, as amended pursuant to that certain First Amendment to Solar Energy Facility Business Lease Agreement for Foxtail Flats Solar, (i) review pursuant to the National Environmental Policy Act resulting in a Finding of No Significant Impact, and (ii) final, unappealable approval by the Bureau of Indian Affairs.

"**Lender(s)**" means any and all Persons, including an Affiliate of Seller: (a) lending money or extending credit (including any financing lease, monetization of tax benefits, construction, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or to an Affiliate of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing (including tax equity bridge financing), credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) for any capital improvement or replacement related to the Project; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

"**Letter of Credit**" means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

"**Licensed Professional Engineer**" means an independent, professional engineer that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, (4) Clean Energy Associates, or (5) Leidos Engineering, LLC; and (B) reasonably acceptable to Buyer (provided that at least one of the foregoing (A)(1)-(5) shall be reasonably acceptable to Buyer), licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

"**Local Provider**" has the meaning set forth in Section 1.4.

"**Losses**" has the meaning set forth in Section 20.1(A).

"**Market Event**" has the meaning set forth in Section 22.22.

"**Market Operator**" means (a) CAISO in its capacity as operator of EIM, (b) the operator of the BAA or any other entity performing the market operator function for the BAA, or (c) any organized day-ahead or intra-hour market for a region that includes the Transmission Provider's Transmission System.

"**Metered Output**" means the Energy made available from the Project at the Point of

Delivery, as measured by the Electric Metering Devices and adjusted for any losses, based on methodology formulated in accordance with Prudent Utility Practices and approved by PNM in its commercially reasonable discretion, between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Model Rated Power**" has the meaning set forth in Section 10.8(D)(6).

"**Month**" means a calendar month.

"**Monthly Billing Period**" means the period during any particular Month in which Solar Energy Output has been generated by Seller for Buyer and delivered to the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.12.

"**Moody's**" means Moody's Investor Services, Inc. and any successor thereto.

"**Mountain Standard Time**" or "**MST**" means the time that is seven (7) hours behind Coordinated Universal Time (UTC).

**"MPT Failure"** means any failure in the Project's main power transformer or high voltage breakers (a) requiring (x) at least a thirty (30) day outage, and (y) any of (i) replacement of the main power transformer or high voltage breakers, (ii) shipment of the main power transformer or major component thereof, or high voltage breakers or major component thereof, to the manufacturer for repair, or (iii) the on-site repair of the main power transformer or major component thereof, or high voltage breakers or major component thereof, and (b) that is not caused directly or indirectly by Seller's failure to comply with Prudent Utility Practices (including failure to maintain adequate spare parts for replaceable equipment connected to the main power transformer or high voltage breakers) or Applicable Law or otherwise by the dalliance, delay, fault or negligence of or by Seller.

"**Munitions List**" means any list of articles, services or technology designated as defense or military articles, technologies, software or services by any relevant Government Authority, including items listed on the United States Munitions List and/or the Common Military List of the European Union.

"**MW**" means megawatt or one thousand (1,000) kW AC.

"**MWh**" means megawatt hours AC.

"**NERC**" means the North American Electric Reliability Corporation or any successor organization.

"**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in Section 17.3(B).

"**Non-Defaulting Party**" means the Party other than the Defaulting Party with respect to

an Event of Default that has occurred under Article 12.

"**Non-Governmental Compliance Obligations**" means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, and self-regulatory organizations to which the Party is required to have membership and/or submit to jurisdiction in the performance of this PPA.

"**O&M Records**" has the meaning set forth in Section 13.4(A).

"**OATT**" means Open Access Transmission Tariff.

"**Operating Parameters**" has the meaning set forth in Section 10.4(A).

"**Operating Procedures**" means those procedures developed pursuant to Section 10.5.

"**Operating Records**" means all operating logs, blueprints for construction, operating manuals, all warranties on equipment, material engineering drawings, environmental permits, plans, and all documents, including but not limited to supply contracts, studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project. Seller may redact from Operating Records information that Seller reasonably deems commercially sensitive, so long as such redaction does not result in a non-performance by Seller of any of its obligations under this PPA, including audits under Section 22.18 or required to verify Seller's compliance with this PPA and its representations and warranties in Section 15.1, Guaranteed Solar Availability Percentage, and billing and payments.

"**Outage Notice**" has the meaning set forth in Section 7.5(A).

"**Party**" or "**Parties**" has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

"**Performance Test Ratio**" has the meaning set forth in Section 10.8(D)(4).

"**Performance Test Report**" has the meaning set forth in Section 10.8(G).

"**Performance Tests**" has the meaning set forth in Section 10.8.

"**Person**" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**Point of Contact List**" or "**POC List**" has the meaning set forth in Section 2 of Exhibit O.

"**Point of Delivery**" means the electric system point at which Seller makes available to Buyer and delivers to Buyer or accounts for the Solar Energy Output being provided by Seller to Buyer under this PPA. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to

this PPA. Energy delivered from the Project to the Energy Storage System shall be adjusted for losses to of Delivery and shall be deemed to have been delivered at the Point of Delivery.

"**PPA**" or "**Power Purchase Agreement**" or "**Agreement**" means this Power Purchase Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"**Primary Metering Device(s)**" means the metering and data processing equipment used as the primary basis to measure, record, or transmit data relating to the Metered Output associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

"**Project**" means Seller's solar energy generation facility with a nameplate capacity of one hundred (100) MWac at the Point of Delivery located in San Juan County, New Mexico which will produce the Solar Energy Output made available to Buyer under this PPA, including one or more of Seller's Solar Units and Seller's Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this PPA, (but expressly excluding the ESS), including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this PPA.

"**Project Manager**" has the meaning set forth in Section 10.1(D).

"**Project Schedule**" has the meaning set forth in Section 3.2(A).

"**Projected Schedule**" has the meaning set forth in Section 7.4(A).

"**Promotional Materials**" has the meaning set forth in Section 22.15.

"**Prudent Utility Practice(s)**" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry or battery energy storage system operators, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are

available to meet the Project's needs;

(B) sufficient operating personnel are available when needed and are adequately experienced and trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for solar power generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Sites and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

"**PTC Period**" means the period beginning on the beginning of the Test Period and running through the tenth ($10^{th}$) anniversary of the beginning of the Test Period.

"**PTC Period Rate**" means the PTC Rate plus the Solar Energy Output Payment Rate.

"**PTC Rate**" means the positive value of (a) the then-current rate for PTCs (per MWh) provided in Section 45(a) of the Code for a qualified facility that uses solar energy to generate electricity, determined by taking into account the inflation adjustment factor provided in Section 45(b)(2) of the Code including the 5-times multiplier set forth in Section 45(b)(6)(A) of the Code to the extent applicable, provided that the rate for PTCs shall in no event exceed the rate used to calculate the PTCs for the Project on Seller's federal tax return for the year in which the PTC Rate is charged to the Buyer, plus (b) the after-tax "gross up" amount that would be required to take into account the federal, state and local income tax to Seller or its direct or indirect owners on the amount set forth in clause (a) hereof, but only to the extent such amount is taxed. The PTC Rate utilized for any given invoice will be determined on the last day of the month covered by such invoice.

"**PTC(s)**" means the production tax credits established pursuant to Section 45 or Section 45Y of the Code, as such law may be amended or superseded.

"**PTs**" has the meaning set forth in Section 5.3(A).

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating at least three hundred (300) MW, in the aggregate, of solar generation and that is trained on the functionality and operation of the solar generation technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that either (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) a current long-term credit rating (corporate or long-term senior unsecured debt) of (A) "A2" or higher by Moody's and "A" or higher by S&P, if such Person is rated by both Moody's and S&P or (B) "A2" or higher by Moody's, or "A" or higher by S&P if such Person is rated by either S&P or Moody's, or (C) equivalent ratings by any other credit rating agency of recognized national standing and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project), or (b) is reasonably acceptable to Buyer.

"**RC**" has the meaning set forth in Section 10.8(D)(1).

"**Receiving Party**" has the meaning set forth in Section 22.14(A).

"**Receiving Party's Representatives**" has the meaning set forth in Section 22.14(B).

"**Recording**" has the meaning set forth in Section 22.19.

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator area in the Western Interconnection.

"**Reliability Curtailment**" means any curtailment of the Project (a) that is ordered by (i) the Market Operator, (ii) the BAA or (iii) the Transmission Provider as operator of the Transmission Provider's Transmission System or pursuant to the Interconnection Agreement, (b) by Seller for an Emergency Condition or safety or equipment failure situations, or (c) except that it shall also be a Reliability Curtailment for an oversupply position only where resources are contributing to an excess position of 50 MW or more in relation to PNM's jurisdictional utility load and the Market Operator cannot either manage such oversupply through market operations or export such oversupply due to NERC generation control performance standards (including BAL-001-2), which curtailment shall be done in an equitable and non-discriminatory manner and consider available energy storage resources associated with Retail Customer. Buyer will, upon reasonable notice, provide Seller reasonable documentation relating to any curtailment Buyer considers Reliability Curtailment.

"**Renewable Energy Certificate**" or "**REC**" means a WREGIS Certificate as defined by the WREGIS Operating Rules and all Environmental Attributes associated with the generated energy. Seller must deliver RECs that are compliant with the requirements of the New Mexico

Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended.

"**Replacement Energy Costs**" means the costs to Buyer reasonable and necessary to replace Solar Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein and based upon similar terms, conditions and performance standards outlined in this PPA) which Seller, in accordance with this PPA, was obligated to deliver to Buyer but failed to provide pursuant to this PPA. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs) and Ancillary Services delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Solar Energy Output to the Point of Delivery and any associated transmission or distribution costs, (b) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (c) Buyer's expenses, including reasonable attorneys' fees, suffered as a result of Seller's failure to perform under this PPA.

"**Report Review Period**" means a period of time equal to fifteen Business Days, beginning on receipt of the report of the Technical Expert pursuant to Section 3.12.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**Retail Customer"** has the meaning set forth in the Recitals.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community or, His Majesty's Treasury or any, and each other sanctions authority which has jurisdiction in respect of any Party or the Project.

"**Scheduled Maintenance Outage**" means a time during which a Solar Unit is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" or **"SCC"** has the meaning set forth in Section 3.9.

**"Scope Reporting Rule"** means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 Code of Federal Regulations § 229.1500, et seq., as amended

from time to time, and, to the extent Buyer or Retail Customer voluntarily elects in its sole discretion to comply therewith, as proposed, or, following the effectiveness thereof, in the final rule form thereof despite being stayed or vacated by appealable judicial action and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Subscriber voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

"**SEC**" has the meaning set forth in Section 22.18.

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Section 45(b) Rate Adjustment**" means a change in Applicable Law that (i) reduces the PTC for solar energy, or (ii) affects the value, availability or transferability of the PTC for solar energy, including, but not limited to, any repeal, amendment or modification of the Inflation Reduction Act of 2022, in each case, from the amount Seller could have realized or incurred under Applicable Law in effect as of the Execution Date.

"**Section 48 Rate Adjustment**" means a change in Applicable Law that (i) reduces the ITC for solar energy, or (ii) affects the value, availability or transferability of the ITC for solar energy, including, but not limited to, any repeal, amendment or modification of the Inflation Reduction Act of 2022, in each case, from the amount Seller could have realized under Applicable Law in effect as of the Execution Date.

"**Security**" means Development Security or Delivery Term Security, as applicable.

"**Seller**" has the meaning set forth in the Preamble.

"**Seller Excused Hours**" means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Scheduled Maintenance Outage, (b) a Reliability Curtailment, (c) a Compensable Curtailment, (d) a Force Majeure Event, or (e) any failure by Buyer to receive Energy at the Point of Delivery.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Project to the Point of Delivery in an amount of at least five (5) MWs not associated with Seller Excused Hours.

"**Seller Guarantor**" means an entity that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Parties**" means: (a) Seller's Affiliates; (b) owners, directors, officers and employees of Seller or Seller Affiliates; and (c) representatives, agents, and subcontractors of Seller and/or Seller Affiliates, in each case, providing services on behalf of, or engaged by, Seller or Seller Affiliates in connection with this PPA and any activity contemplated hereunder or thereunder (and a "Seller Party" is any one of the foregoing).

"**Seller Permitted Transfer**" means any of the following: (a) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax

Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Ultimate Parent retains the ability to control the management and policies of Seller; (b) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction or (iii) a direct or indirect transfer to an entity of 50% or more of the shares of, or equity interests in, Seller so long as Seller remains Controlled by Seller's Ultimate Parent; *provided*, that in the case of (b), (A) the transferee is a Qualified Transferee, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to any Seller's Lender and any subsequent assignee, designee or transferee thereof; *provided* that in the case of (c), (A) the Seller's Lender or its applicable assignee, designee or transferee is a Qualified Transferee and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the Solar Energy Output for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; provided that if (a)(i) is less than (a)(ii), then zero, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or in entering into new arrangements which replace this PPA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this PPA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this PPA.

**"Senior Lender"** means a Lender that is not an Affiliate of Seller.

"**Serial Defect**" means a defect occurring in ten percent (10%) or more of the same parts or components of the Project.

"**Shortfall Factor**" has the meaning set forth in Section 10.9(B).

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this PPA. This PPA is Site specific, and any relocation of the physical location of the proposed Point of Delivery with respect to the Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. Adding or subtracting contiguous parcels of property or modifying the layout of arrays within the Site will not be deemed a relocation requiring Buyer consent.

"**Solar Charging Point**" means the electric system points specified on Exhibit B at which Seller delivers Solar Energy Output to the Energy Storage System for purposes of charging the ESS under the terms of the Energy Storage Agreement.

"**Solar Energy Output**" means Metered Output, Environmental Attributes (including, but not limited to RECs) and Ancillary Services generated by the Project.

"**Solar Energy Output Payment Rate**" means the price to be paid by Buyer to Seller for the Solar Energy Output, as set forth in Section 3.1.

"**Solar Period Hours**" has the meaning set forth in Exhibit H.

"**Solar Unit(s)**" means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with a single inverter.

"**Special Service Contract**" has the meaning set forth in the Recitals.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of generating units, including the Solar Units.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits and any other tax credits which are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, (i) with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion

of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project, or (ii) any transaction or series of transactions pursuant to which Seller or an upstream equity owner of Seller sells the tax credits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

"**Technical Expert**" means, (i) with respect to an Import Restraint, an independent third-party validation firm that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, or (4) Clean Energy Associates; or (B) mutually agreed upon by both Parties; (ii) with respect to a Counteracting Savings Notice or Express Contingency Notice, an independent third-party validation firm that is: (A) selected by Buyer if a Counteracting Savings Notice, or Seller if a Express Contingency Notice from among (1) Pricewaterhouse Coopers, (2) KPMG, or (3) Ernst & Young; or (B) mutually agreed upon by both Parties.

"**Term**" means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Energy**" means any and all Solar Energy Output generated by the Project and delivered to Buyer during the Test Period.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date, with respect to the relevant capacity, as applicable.

"**Test Rated Power**" has the meaning set forth in Section 10.8(D)(5).

"**Transmission Provider**" means Public Service Company of New Mexico, Inc., a New Mexico corporation, acting in its transmission function capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under its OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means DESRI Holdings, L.P. or its successor in interest with respect to Seller following a Seller Permitted Transfer upon notice to Buyer identifying the new Ultimate Parent.

"**Weather Stations**" has the meaning set forth in Section 10.11(A).

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

"**WREGIS Qualified Reporting Entity**" as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS Certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules and WREGIS Terms of Use.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this PPA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this PPA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this PPA, the terms of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination,

requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this PPA as a whole.

(H) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(I) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or".

(J) Headings and Section titles are solely for convenience and should not be used to aid in the construction of this PPA.

(K) All uses of the word "shall" in this PPA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions and therefore:

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this PPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

(D) Notwithstanding the foregoing, nothing in this PPA shall be construed to limit Seller's rights, claims, causes of action or similar legal abilities against the Transmission Provider, BAA or Market Operator for actions those parties may take from time to time, nor shall this PPA be construed to limit the liability of the Transmission Provider, BAA or Market Operator with respect to Seller.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power to the Project, for any purpose ("**House**

**Energy**"). Seller shall secure a contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter Energy generated and delivered by the Project in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least thirty (30) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this PPA are not binding upon the Local Provider. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this PPA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and for House Energy, backfeed power, and station service power or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy, backfeed power, and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

## ARTICLE 2
## Term and Termination

2.1 Execution Date and Term. This PPA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth ($20^{th}$) Commercial Operation Year ("**Term**"), subject to the early termination provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms, as more fully set forth in this PPA, apply to the transaction contemplated by this PPA:

**COMMERCIAL TERMS**

| | |
|---|---|
| **Buyer:** Public Service Company of New Mexico | **Seller:** Four Mile Mesa Solar, LLC |
| **Project:** FOUR MILE MESA | |
| **Point of Delivery:** The point within WECC Path 48 where Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided under this PPA, as further specified in the definition of "Point of Delivery". | |
| **Contract Term:** 20 years following the Commercial Operation Date | **Guaranteed Solar Capacity (MWs): 100** $MW_{AC}$, |
| **Product Type:** Bundled Energy, Ancillary Services, RECs, and Environmental Attributes | **Solar Energy Output Payment Rate:** $39.79/MWh |
| **Day(s) of week:** Monday through Sunday, including NERC holidays | **Hours:** Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time ("**MST**") |
| **Guaranteed Start Date:** Two Hundred Seventy (270) Days after the Expected Commercial Operation Date | |
| **Expected Commercial Operation Date:** December 31, 2027, subject to extensions as set forth in Section 3.6. | |

3.2 Project.

(A) Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

(B) Exhibit L identifies the expected first year total annual Energy to be delivered from the Project to the Point of Delivery and the corresponding capacity factor. Buyer shall retain the right to review (i) any proposed upward changes and (ii) any proposed downward changes to the expected first year total Energy in excess of 3.0% with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Solar Units and Energy Storage System at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units, Interconnection Facilities, and Energy

Storage System at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes; provided, however, that such consent from Buyer or the Retail Customer shall not be unreasonably conditioned, withheld or delayed.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practice(s), the terms of this PPA and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Sections 3.4.A through Section 3.4.H, and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N – Interconnection Metering Standard from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) be capable of both full load and idle operation over an ambient temperature range of -10$^{o}$F to 110$^{o}$F with the full range of relative humidity;

(F) deliver Energy to Buyer, at the frequency specified by Buyer , within a commercially reasonable range;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of disconnection remotely by the System Control Center; and

(I) the Project shall meet or exceed the recommended performance specifications of this Section 3.4(I) through Section 3.4(L), and as appropriately defined in IEEE Standard 2800-2022 Sections 5, Section 6 and Section 7 at the Point of Delivery during nominal grid conditions

(J) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Sections 5 at the Point of Delivery;

(K) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Sections 7 at the Point of Delivery, which shall be Category II minimum;

(L) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery; and Buyer acknowledges that in some instances simultaneous conflicting parameters cannot be followed; and

(M) No later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the Project. These controls shall include the following MESA-ESS modes or equivalent: (i) Active Power Smoothing, (ii) Automatic Generation Control, and (iii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Sections 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. As reasonably required prior to Commercial Operation, Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this PPA, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended (a) up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Excused Delay that delays construction or commencement of operation of the Project, on a day-for-day basis (b) up to a maximum of one hundred eighty (180) days or longer period agreed to by the Parties in the event of delay associated with the timely completion and operation of the Interconnection Facilities, necessary for the interconnection of the Project (and in any event allowing for back-feed to the Project by no later than March 15, 2027), provided that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, on a day-for-day basis, (c) on a day-for-day basis up to a maximum of one hundred eighty (180) Days for each Day that NMPRC Approval has not been received after the occurrence of the initial Regulatory

End Date, and (d) on a day-for-day basis for any Buyer Commissioning Delays. Seller shall give written notice to Buyer describing any such delay in accordance with Section 14.2 after becoming aware of any extension of Expected Commercial Operation Date. The number of Days of such extension shall be calculated from the date on which the event begins. If cumulative extensions under (a) or (b) above will delay the Commercial Operation Date beyond the Guaranteed Start Date for more than two hundred seventy (270) Days, then Buyer will have the right to terminate this PPA without liability of either Party other than obligations already incurred, and Buyer shall return the Development Security less any amounts then due from Seller to Buyer.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity as of the determination date. Once the accrued Delay Damages equal the Development Security, then Seller shall thereafter not be obligated to pay Delay Damages. The Delay Damages and Buyer Termination Payment are the Buyer's sole and exclusive monetary remedies, and Seller's sole and exclusive monetary liabilities, for Buyer's damages due to any delays in achieving the Expected Commercial Operation Date.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity of the Project has been constructed, commissioned, and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Solar Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars ($350,000) per MW of Delayed Capacity ("**Capacity Shortfall Damages**") as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed Solar Capacity, in which case the Guaranteed Solar Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Energy.

(A) Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generation Operator and will designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M, forty-five (45) Days prior to the beginning of the Test Period. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Test Energy as reasonably required for purposes of testing and commissioning the Project. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at

the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to the initial delivery of Test Energy to Buyer.

(B) Seller shall retain Public Service Company of New Mexico as its WREGIS Qualified Reporting Entity to report to WREGIS under the WREGIS Operating Rules, unless agreed to otherwise by Buyer and Retail Customer. Seller shall document and provide information required for the Qualified Reporting Entity to record RECs with WREGIS for the Test Energy generated prior to the Commercial Operation Date, including but not limited to production data and REC vintage. To the extent that Seller does not provide the necessary information or WREGIS does not provide WREGIS Certificates for the Test Energy, Seller shall (a) provide the RECs for a quantity of Energy equivalent to the quantity of such Test Energy or (b) reimburse Buyer for Buyer's reasonable and documented costs to replace RECs for a quantity of Energy equivalent to the quantity of such Test Energy.

3.10 Notice of Commercial Operation. Not less than thirty (30) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied (the "**Commercial Operation Notice**"). Buyer shall in writing either accept or reject Seller's Commercial Operation Notice within ten (10 Business Days after the date of such Commercial Operation Notice, in its reasonable discretion, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If, within such ten (10) Business Day period, Buyer does not respond or if Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this PPA is not prohibited by Applicable Law. Any breach of this Section 3.11 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.12 Eligible Change in Tariff; Import Restraint; Change in Tax Law.

(A) Seller acknowledges that this Section 3.12 is intended for sole use in connection with Retail Customer service under Schedule 36-B and is not precedential for any other contract or agreement with PNM, with Seller or with any other Person. To the extent either (X) one or more Eligible Change in Tariffs, a Section 45(b) Rate Adjustments or Section 48 Rate Adjustments occur between the Execution Date and the Adjustment Cutoff Date that Seller is able to document will increase Seller's costs reasonably anticipated over the Term to perform this PPA by an amount that is equal to at least one and one half percent (1.5%) of the costs Seller anticipated on the Execution Date, or (Y) one or more Import Restraints occur between the Execution Date and the Adjustment Cutoff Date that will delay the Expected Commercial Operation Date, Seller may prior to thirty (30) Days after the occurrence of each such Eligible Change in Tariff, Section 45(b) Rate Adjustment, Section 48 Rate Adjustment or Import Restraint, provide written notice to Buyer of an increase to the Solar Energy Output Payment Rate to keep Seller whole (using Applicable Law and actions of Governmental Authorities in effect as of the Execution Date as the baseline) with respect to the cost increases in the case of an Eligible Change in Tariff, Section 45(b) Rate Adjustment or Section 48 Rate Adjustment, or delays that Seller reasonably anticipates in the case of an Import Restraint, including replacement supply arrangements and the required extension of the Expected Commercial Operation Date, Guaranteed Start Date, and all other milestones (in each case, an "**Express Contingency Notice**").

(B) If Buyer disagrees with any aspect of an Express Contingency Notice, Seller shall at its expense retain the Technical Expert. Within fifteen (15) Business Days of Buyer's receipt of the Express Contingency Notice, Buyer and Retail Customer may submit a report to the Technical Expert setting forth questions, countervailing considerations, and other relevant matter, and thereafter the Technical Expert will generate a report respecting the matters set forth in the Express Contingency Notice, including whether it agrees with the cost increases in the case of an Eligible Change in Tariff, a Section 45(b) Rate Adjustment or a Section 48 Rate Adjustment or schedule changes in the case of an Import Restraint, evidencing the facts alleged by Seller. Such report shall preserve the confidentiality of the information provided by the Parties. Buyer shall have the Report Review Period to review the report from the Technical Expert. Seller shall bear the expenses of the Technical Expert. The Technical Expert's final written determinations shall be binding on the Parties and not subject to dispute.

(C) The PPA shall be automatically amended on the first day following the Report Review Period to incorporate any increase to the Solar Energy Output Payment Rate or extension to the Expected Commercial Operation Date, Guaranteed Start Date, or other milestones as set forth in the Express Contingency Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable, except that unless Buyer agrees otherwise in writing: (1) any increase to the Solar Energy Output Payment Rate pursuant to Section 3.12(A)(X) shall not exceed $0.16/MWh, and (2) any extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other milestone pursuant to Section 3.12(A)(Y) shall not exceed one hundred and eighty (180) days; and provided further, that if Seller's Express Contingency Notice sets forth for implementation an increase to the Solar Energy Output Payment Rate that exceeds the increase limitation in clause (1) or extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other milestone that exceeds the extension limitations in clauses (2) above, and Buyer does not accept such excess increase or extension in writing, Seller shall have the right to terminate this PPA and pay to Buyer the Express Contingency Termination Payment, but without further liability of either Buyer or Seller for such termination,

upon notice to Buyer, unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security less any unpaid Express Contingency Termination Payment to Seller within fifteen (15) days after such termination.

(D) Counteracting Savings Price Adjustment. If a Change in Law occurs after the Execution Date and before the first anniversary of the last adjustment to price or schedule following an Express Contingency Notice that creates savings for Seller (if there has been such an adjustment), economic benefits for Seller, decreases costs of performance or offsets prior increases in costs to performance set forth in a previous Express Contingency Notice, Buyer may, within ninety (90) days after such Change in Law, provide written notice to Seller of a decrease to the Solar Energy Output Payment Rate (a "**Counteracting Savings Notice**"). The Parties shall use the process provided in Section 3.12(B) as if the Counteracting Savings Notice was an Express Contingency Notice, but providing for a reduction in the Solar Energy Output Payment Rate and for Buyer to at its expense retain the Technical Expert, and Seller will have the Report Review Period to review the report of the Technical Expert. The PPA shall be automatically amended on the first day following the Report Review Period to incorporate any decrease to the Solar Energy Output Payment Rate as set forth in the Counteracting Savings Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable; provided that, unless Seller agrees otherwise in writing, any decrease to the Solar Energy Output Payment Rate under this Section 3.12(D) shall not exceed the cumulative previous increases to the Solar Energy Output Payment Rate pursuant to all prior Seller Express Contingency Notices.

## ARTICLE 4
## AGC; Curtailment

4.1 AGC; Curtailment. Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term capable of controlling each inverter. Beginning on the Commercial Operation Date and in response to directives from the System Control Center, Seller shall curtail the Project by use of the AGC system to effect Buyer's curtailment rights pursuant to this Section 4.1 for a Compensable Curtailment or a Reliability Curtailment. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction.

(A) The Project shall be curtailable by use of the AGC system to effect a Reliability Curtailment or Compensable Curtailment. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations. "**Deemed Energy**" means the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Compensable Curtailment as follows: Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account weather and pyranometer data

from the meteorological station(s), via a mutually agreed upon method, at the Site for all or a portion of the Solar Units taken out of service due to the Compensable Curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller's calculations of Deemed Energy.

(B) Seller shall reduce Solar Energy Output from the Project during and to the extent of any Reliability Curtailment or Compensable Curtailment.

## ARTICLE 5
## Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Seller shall be responsible for the costs of interconnection and costs required to deliver the Energy from the Project to Buyer at the Point of Delivery at the required voltage, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to the Project's output up to the Point of Delivery. Buyer acknowledges and agrees that the Interconnection Agreement establish a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the ESS, provided that delivery of Energy from the Project to the Transmission Provider's Transmission System shall take priority over Energy discharged from the ESS; and further provided, that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Energy discharged from the ESS shall take priority over delivery of Energy from the Project.

(B) [RESERVED]

(C) On a Day-ahead basis, and no later than 4:00 a.m. MST, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer at the Point of Delivery. Each Friday, and no later than 12:00 noon MST, Seller shall provide Buyer a weekly Project generation forecast for the following week based on equipment availability. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond, including as necessary under participation in any regional market, including the EIM or the EDAM, if any.

(E) Seller shall provide to Buyer a one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete

resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O in order for Seller to achieve Commercial Operation.

(F) Seller shall deliver the Solar Energy Output to either the Point of Delivery or Solar Charging Point in accordance with Buyer's dispatch elections made from time to time, *provided, however*, notwithstanding Buyer's dispatch elections, Seller may deliver Energy to the Solar Charging Point as allowed under Section 7.4(A).

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers ("**CTs**") and potential transformers ("**PTs**") ("**Back-Up Metering**"), are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery. The design of the Electric Metering Device system shall be subject to Buyer timely review and approval, not to be unreasonably withheld. Electric Metering Devices shall be capable of measuring and reading instantaneous, five minute, fifteen minute and hourly real and reactive Energy and capacity. Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with

the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Secondary Metering, fails to register, or if the measurement made by an Electric Metering Device, or Secondary Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, followed by Secondary Metering, to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If Secondary Metering is installed on the low side of Seller's step-up transformer, the Secondary Metering data shall be adjusted for losses in the same manner as for the Primary Metering Device. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

## ARTICLE 6
## Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this PPA are subject to satisfaction of the following conditions precedent:

(A) As provided in Section 17.3, receipt of NMPRC Approval; and

(B) Receipt of approval of the Boards of Directors of Buyer and its parent company by no later than ninety (90) Days after the Execution Date.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

## ARTICLE 7
## Sale and Purchase of Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Solar Energy Output delivered or deemed delivered by Seller at the Point of Delivery in accordance with Article 5; *provided, however,* that, subject to Section 8.1(A), Buyer shall not be required to receive and purchase Energy from the Project when and to the extent that (a) a Party's performance is excused by a Force Majeure Event, (b) a Reliability Curtailment is continuing, (c) a Seller Forced Outage is continuing, (d) a Compensable Curtailment is continuing, or (e) a Scheduled Maintenance Outage is continuing. Furthermore, and without limiting Section 10.7, Buyer shall not be required to receive or purchase Solar Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Solar Capacity, as adjusted for losses to the Point of Delivery.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Energy from the Project up to delivery and receipt at the Point of Delivery and Buyer shall be deemed to be in control of such Energy from the Project from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy from the Project shall transfer from Seller to Buyer at the Point of Delivery. Title related to any Environmental Attributes and Future Environmental Attributes shall transfer from Seller to Buyer upon generating of the Energy from the Project.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such Future Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any Future Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this PPA, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; provided that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements and any other applicable guidelines. Buyer shall control scheduling of Metered Output. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Solar Energy Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall (i)provide Buyer with a good faith estimate of the hourly quantities of Solar Energy Output that Seller expects to generate in the following Commercial Operation Year ("**Projected Schedule**"); and (ii) provide estimates of the daily quantity of Energy to be delivered to Buyer. Seller shall also configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than twenty (20) MW per minute; provided if any Energy in excess of the ramp rate limit can be utilized to charge the ESS, Buyer may instruct Seller to deliver such excess Energy to the Solar Charging Point and in such case Buyer shall pay for such Energy as Solar Energy Output in accordance with Article 8. Buyer shall not be obligated to maintain available capacity in the Energy Storage System to accept excess Energy that exceeds the ramp rate limit.

(B) PNM is not required to provide this Project as a participating resource in a regional market, including the EIM or EDAM. However, should Buyer submit the Project for participation in any regional market, including the EIM or EDAM, the Parties agree that Buyer

shall be solely responsible for any costs associated with the Project's participation in any regional market, including but not limited to costs associated with upgrades to the Project's RTU hardware, software, communication connection upgrades or any other upgrades necessary for the Project to participate in the regional market. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Solar Energy Output in accordance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Solar Energy Output during an Emergency Condition.

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Solar Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly quantities of Solar Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Seller Forced Outages.

(A) Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

7.6 Availability Guarantee. Seller guarantees that the Project shall be available to produce Solar Energy Output and shall pay Solar Availability Damages, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

## ARTICLE 8
## Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in

Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly Solar Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Solar Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to (i) the product of (a) the aggregate amount of Solar Energy Output (MWh) delivered to Buyer at the Point of Delivery from the Project plus the Deemed Energy resulting from Compensable Curtailment multiplied by (b) the Solar Energy Output Payment Rate, *plus* (ii) during the PTC Period, the product of the amount of Deemed Energy resulting from Compensable Curtailment *multiplied by* the PTC Period Rate. As used herein, the "**Solar Energy Output Payment Rate**" is the rate of $39.79 per MWh for the Solar Energy Output delivered or deemed delivered to Buyer to the Point of Delivery from the Project. The Solar Energy Output Payment Rate also is the sole payment from Buyer to Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Solar Energy Output Payment Rate includes all Taxes. Buyer shall not be required to pay Seller for any Energy curtailed during any Reliability Curtailment.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this PPA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 9
## Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail, including an Attestation and Bill of Sale verifying the associated RECs and Environmental Attributes, if applicable, in the form of Exhibit G-2 ("**Attestation and Bill of Sale**").

(D) Beginning with the first Month in the Test Period, until an invoice is

required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this PPA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this PPA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the "prime" rate as published in The Wall Street Journal on the first Business Day of each Month plus one-half percent (0.5%) ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this PPA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Gross Receipts Tax is applicable to the sale or delivery of Solar Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Solar Energy Output and on Buyer's payment and Seller's receipt of amounts due under this PPA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Solar Energy Output to Buyer pursuant to this PPA.

(B) Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this PPA and implement the provisions in this PPA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this PPA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this PPA, including Section 9.9 below, all payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this PPA, including damages and other payments that are owed by a party to the other Party pursuant to this PPA. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this PPA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this PPA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 10
## Operations and Maintenance

10.1 Construction of the Project.

(A) Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of

whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-23-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by NMSA Section 62-13-16. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer after consultation with Retail Customer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed Solar Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice

delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this PPA with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein, provided that with respect to Buyer coordination requirements Buyer timely responds to all requests from Seller relating thereto when acting in its merchant function capacity (all communications regarding Commissioning Tests between Seller and the Transmission Provider are governed by the Interconnection Agreement and not this PPA) associated with the Commissioning Tests.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least thirty (30) Days' prior notice of the approximate test date and ten (10) Days prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days' advance notice, within normal working days, with the names and affiliations of its authorized agents,

employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this PPA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this PPA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five-minute and real-time data communications with Buyer related to delivery of the Solar Energy Output up to the Point of Delivery. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet operability performance requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. Seller shall provide Buyer with all reasonably required real time measurement parameters of the Project made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Sections 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers requirements and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's substation major equipment

and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day's written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than ninety (90) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "**Operating Procedures**"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, and Solar Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, the PPA, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this PPA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following Commercial Operation Year. Should Buyer desire to change the reporting dates noted above, the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's generation, including the duration of such event. Each Scheduled Maintenance Outage for the Commercial Operation Year will be subject to reasonable approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Project's generation for any reason at any time during May 1st through September 30th without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole

discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Seller may, in its sole discretion, perform scheduled maintenance on any components of the Project, so long as such maintenance is performed entirely during nighttime hours. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Metered Output to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Seller shall not sell or divert Solar Energy Output to any Person other than Buyer.

10.8 Performance Tests. "**Performance Tests**" means the Commissioning Performance Test, the Annual Performance Tests, and Buyer-Requested Performance Tests as described in this Section 10.8 and in Sections 10.9 and 10.10. Performance Tests shall be performed to verify compliance of the solar photovoltaic plant net AC capacity at the Point of Delivery with the Guaranteed Solar Capacity.

(A) Seller shall conduct a performance test prior to the Commercial Operation Date in accordance with applicable provisions of this Section 10.8 (the "**Commissioning Performance Test**"). The Commissioning Performance Test shall be determined to be satisfied when the Performance Test Ratio determined from the Commissioning Performance Test results in a value greater than or equal to 0.95 without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. In the case that the Performance Test Ratio determined from the Commissioning Performance Test is below 0.95, Capacity Shortfall Damages shall be due from Seller in accordance with Section 3.8 of this PPA. Capacity Shortfall Damages shall be applied to a Delayed Capacity value equivalent to the Guaranteed Solar Capacity multiplied by (0.95 - the as-tested Performance Test Ratio) and then multiplied by the Capacity Shortfall Damage rate identified in Section 3.8.

(B) Seller shall conduct a performance test in accordance with this Section 10.8 in each Commercial Operation Year after the Commercial Operation Date (each, an "**Annual Performance Test**"). Each Annual Performance Test shall be performed no earlier than nine (9) months and no later than fifteen (15) months from the completion of the previous Annual Performance Test or Commissioning Performance Test as mutually agreed by the Parties.

(C) Annual degradation rates included in Exhibit K will be used in the Annual Performance Test PVSYST Model for the purpose of Annual Performance Tests described in this Section 10.8.

(D) The Commissioning Performance Test, Annual Performance Tests, and Buyer-Requested Performance Tests shall be conducted in accordance with ASTM E2848-13, except where deviations are provided in this Section 10.8(D).

(1) The reporting conditions ("**RC**") will be developed in accordance with ASTM E2939-13 and will utilize the procedure outlined in Exhibit F. The RC will be calculated using the mean of the qualifying site measured irradiance, wind speed, and ambient temperature data collected during the Performance Test. The same RC will be used for computing the Model Rated Power and Test Rated Power using their respective regression equations.

(2) The Performance Test period will include at least four (4) days of data and at least fifty (50) filtered data points.

(3) Model Rated Power and Test Rated Power shall account for losses to the Point of Delivery.

(4) The result from an Annual Performance Test or Buyer-Requested Performance Test is the ratio of Test Rated Power to Model Rated Power (the "**Performance Test Ratio**").

(5) "**Test Rated Power**" shall be the value produced by the regression of filtered site measured power and site measured weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(6) "**Model Rated Power**" shall be the value produced by the regression of filtered Annual Performance Test PVSYST Model power and filtered model weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(7) The Model Rated Power will be calculated using the Annual Performance Test PVSYST Model. Site measured POA irradiance will be used as the irradiance input to the Annual Performance Test PVSYST Model.

(8) The PVSYST model utilized by Seller to predict the Annual Generation Forecasts included in Exhibit L will be used as the PVSYST model for initial comparison to the actual site performance during the Commissioning Performance Test. Such PVSYST model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of the Commissioning Performance Test. Should any modifications to this PVSYST model be proposed by Seller after completion of the Commissioning Performance Test, Seller shall provide to Buyer the proposed modifications to the draft PVSYST model for review and approval. Any modifications to the PVSYST model mutually accepted by the Parties will be incorporated and the resulting modified PVSYST model together with a schedule of annual degradation will be the "**Annual Performance Test PVSYST Model**".

(9) The Annual Performance Test PVSYST Model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer within one (1) month of the completion of the Commissioning Performance Test. The Annual Performance Test PVSYST Model will annually account for actual degradation through the prior Performance Test with incremental annual degradation added as previously agreed to by the Parties. This mutually accepted Annual Performance Test PVSYST Model will be utilized without modification, unless agreed to by both Parties, in all Annual Performance Tests and Buyer-Requested Performance Tests as well as determination of any Annual Performance Test Guarantee Damages as defined in Section 10.9.

(E) Within thirty (30) Days of the completion of a Performance Test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the Annual Performance Test.

(F) For all Performance Tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the Performance Test or re-test, and Buyer shall have the option to inspect the Project during such Performance Test or re-test.

(G) For all Performance Tests and re-tests, Seller shall provide a "**Performance Test Report**" that includes all performance data, model simulations, calculations, and test reports to the Buyer for analysis and review. Seller shall maintain records of performance testing for a minimum of five (5) years following the date the test was performed.

(H) Proposed terms associated with the irradiance conditions, degradation allowances, modeling software inputs, and the results evaluation methodology to be utilized for documenting the tested performance shall be provided by the Seller and subject to mutual agreement of the Parties.

10.9 Annual Performance Test Guarantee Damages.

(A) Seller guarantees that Annual Performance Tests shall meet or exceed the Annual Performance Test Guarantee. The "**Annual Performance Test Guarantee**" is met when the average of the Performance Test Ratio for the Annual Performance Test and the Performance Test Ratio for the previous Annual Performance Test, or the Commissioning Performance Test (i.e. 0.95) as applicable, results in a value greater than or equal to 0.95 (the "**Annual Performance Test Guarantee Ratio**") without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. If an Annual Performance Test shows that the Annual Performance Guarantee was met, then Seller shall not owe Annual Performance Test Guarantee Damages.

(B) If any Annual Performance Test shows that the Annual Performance Guarantee was not met, then Seller shall owe Annual Performance Test Guarantee Damages calculated in accordance with this Section 10.9. The calculated Energy shortfall (the "**Energy Shortfall**") shall be the total Energy delivered by Seller in the most recently completed Commercial Operation Year multiplied by the Shortfall Factor. The "**Shortfall Factor**" is one (1) minus the ratio of the average of the Performance Test Ratios of the most recently completed

Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year and the Annual Performance Test Guarantee Ratio. These calculations shall be performed using the following formulas:

$$ES = E_n \times SF$$

$$SF = 1 - \frac{\frac{1}{2}(PTR_n + PTR_{n-1})}{APTGR}$$

Where,

ES = Energy Shortfall

$E_n$ = Energy delivered by Seller in the most recently completed Commercial Operation Year

SF = Shortfall Factor

$PTR_n$ = Performance Test Ratio for the most recently completed Commercial Operation Year

$PTR_{n-1}$ = Performance Test Ratio for the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year

APTGR = Annual Performance Test Guarantee Ratio

(C) Seller shall pay Annual Performance Test Guarantee Damages in accordance with this Section 10.9. Liquidated damages associated with failure to meet the Annual Performance Test Guarantee shall be paid in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Energy Shortfall, as determined using the above calculation (the resulting amount is the "**Annual Performance Test Guarantee Damages**").

(D) The following is an example (for illustrative purposes only) of the Energy Shortfall calculation: A Performance Test is conducted and results in an average Performance Test Guarantee Ratio of 0.930 (the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year). The Solar Energy Output Payment Rate is $39.79/MWh and the total annual Energy delivered by the Project in the most recently completed Commercial Operation Year is 130,000 MWh. Annual Performance Test Guarantee Damages shall be paid as a result of the Performance Test Ratio being less than the Annual Performance Test Ratio of 0.95. The amount of Annual Performance Test Guarantee Damages is calculated to be $39.79/MWh X [130,000 X (1 - 0.93 / 0.950)] = $108,898.95.

(E) [RESERVED].

(F) Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for the failure of Seller to meet the Annual Performance Test Guarantee or the Annual Performance Test Guarantee Ratio (including in the event of any Buyer-Requested Performance Tests), shall be

the payment of Annual Performance Test Guarantee Damages as and when required in this Section 10.9; provided, however, that the foregoing shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail meet the Annual Performance Test Guarantee or the Annual Performance Test Guarantee Ratio. Any such failures shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default under this PPA.

10.10 Buyer-Requested Performance Tests. In the event of a material adverse change in expected Solar Energy Output based on monthly billing (not including curtailments or expectations of curtailments allowed pursuant to this PPA), Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the conditions described in this Section 10.10. Buyer-Requested Performance Tests will be conducted as described in Section 10.8, for Buyer-Requested Performance Tests performed within the second and subsequent Commercial Operation Years.

(A) If the results of a Buyer-Requested Performance Test fail to meet the Annual Performance Test Guarantee Ratio, Annual Performance Test Guarantee Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(B) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

10.11 Weather Stations.

(A) Seller shall, at Seller's cost and no later than the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations ("**Weather Stations**") at the Project Site to monitor and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by Seller's engineer and reasonably agreed to by Buyer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall be of a grade equivalent to or better than those used in large-scale utility solar facility installations and include the capability for measuring, indicating, and recording ambient temperature, wind speed and direction (instantaneous and average), barometric pressure, solar radiation, and relative humidity. Seller shall submit to Buyer for review and approval, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules, current inverters, and other prominent features, as applicable. The Weather Stations shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to be maintained by Seller and to provide an unrestricted, real-time indication of all measured parameters to Buyer and the data shall be available to Buyer via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted (subject to Seller's software licenses) real time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather

Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations.

(C) Data collected from the Weather Stations shall be utilized for determination of the Solar Performance Ratio, minimum solar irradiance for determination of system availability and lost output due to curtailment or outages.

10.12 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Solar Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

## ARTICLE 11
## RECs and Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Except with respect to the first month of available RECS following the Commercial Operation Date, which Seller shall make available as soon as reasonably possible, Seller shall make the RECs available to Buyer within fifteen (15) Business Days of the RECs being created in WREGIS and available for transfer. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within fifteen (15) Business Days after written notice from Buyer of such failure, and such failure is due to Seller's fault or negligence, provided that Buyer shall use commercially reasonable efforts to substantiate such costs by obtaining a quote for an alternative means of procuring the same amount of RECs. The RECs and Environmental Attributes transferred under this PPA are bundled with the associated Energy.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Buyer may, to the extent permitted by Applicable Law and this PPA, assign its rights, title and interest in and to any RECs and Environmental Attributes associated with the Project to one or more third

parties under any transaction permitted by Applicable Law.

(D) [RESERVED].

(E) Seller shall, at its sole expense and before commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the purpose of creating and tracking all Renewable Energy Certificates corresponding to all Metered Output including all Test Energy, including a meter on the low side of Seller's step-up transformer connected to the ESS, and that all associated WREGIS Certificates are issued and tracked and transferred in a timely manner to Buyer. The Parties acknowledge that Seller's registration of the Project with WREGIS requires achievement of the Commercial Operation Date. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account. Buyer shall have the exclusive right to transfer RECs and Environmental Attributes to Retail Customer's WREGIS account, or retain the RECs and Environmental Attributes in Buyer's WREGIS account and retire the RECs and Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(F) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(G) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, which shall be Public Service Company of New Mexico, unless agreed to otherwise by Buyer and Retail Customer.

(H) Seller shall not report in any public communication, or under any program, that any of the Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer or Retail Customer. Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Environmental Attributes for Buyer to own, hold and manage in Buyer's or Retail Customer's own name and account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Environmental Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Environmental Attributes, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy, and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. To the extent that any such public communication is allowed under Section 13.1, in any public

communication concerning the Project, Project Energy or the Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Project Energy.

## ARTICLE 12
## Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller enters into an assignment for the benefit of creditors;

(3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller's voluntarily taking advantage of any such law by answer or otherwise;

(4) The sale by Seller to a third party, or diversion by Seller for any use, of Energy, RECs or Ancillary Services committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this PPA or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this PPA, or other date mutually agreed to by the Parties in writing;

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA on more than three occasions in any rolling thirty-six consecutive month period;

(8) The Project fails, after the third anniversary of the Commercial Operation Date, to maintain an Actual Solar Availability Percentage of at least eighty percent (80%) over two (2) successive Commercial Operation Years; provided, however, for a single occurrence during the Term of this Agreement for a period of no longer than two hundred seventy (270) days, if the

Project suffers a MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Mechanical Availability calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(8);

(9) The Project fails to obtain an Actual Solar Availability Percentage of at least fifty-five percent (55%) over any Commercial Operation Year; provided, however, for a single occurrence during the Term of this PPA for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Mechanical Availability calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(9);

(10) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The failure of Seller to make any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure

(3) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) Seller's failure to make any payment due to Buyer under or in connection with this PPA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this PPA), unless remedied within thirty (30) Days of receipt by Seller of written notice of such failure from Buyer;

(6) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice; or

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA, unless remedied within five (5) Business Days of receipt of notice of such failure.

(8) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to deliver Energy to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including, but not limited to, the Interconnection Agreement required to deliver Energy to the Point of Delivery;

(3) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this PPA;

(4) Seller's failure to maintain in effect any agreements required to deliver Solar Energy Output to the Point of Delivery;

(5) Seller's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Buyer; or

(6) Seller fails to register the Project within WREGIS or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this PPA.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this PPA, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; *provided, however*, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors; or

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise.

(4) Buyer's assignment of this PPA except as permitted in accordance with Article 18.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer. or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(2) Any representation or warranty made by Buyer in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term, if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an uncured Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this PPA from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security, and (v) exercise its rights to terminate this PPA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date as described in this Section 12.3(B); provided, however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer; and provided, further, and without limiting any rights of the Non-Defaulting Party to terminate this PPA at any time as permitted hereunder, that if an Event of Default has occurred before the Commercial Operation Date and written notice thereof given by the Non-Defaulting Party and such Event of Default has continued uncured from the date of the Event of Default for a period of one hundred eighty (180) Days without the Commercial Operation Date having occurred, then either Party may thereafter terminate this PPA as provided for in Section 12.4.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially

reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material performance obligation of the other Party under this PPA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss. The Parties agree that the Termination Payment does not represent such waived consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

12.8 Payment of Amounts Due. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, either Party may send the other Party an invoice for such damages or other amounts as are due to the Party providing the invoice at such

time from the other Party under this PPA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this PPA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE 13
## Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed) to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this PPA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this PPA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law.

All records of Seller and Buyer pertaining to the operation of the Project or this PPA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this PPA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) quarterly construction progress reports until the start of construction and monthly thereafter in such form as may be agreed to by Buyer in accordance with Sections 10.1(A) and 10.1(B), and (ii) reports, of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Solar Energy Output from, the Project in accordance with this PPA, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this PPA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Solar Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which

such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the Solar Units.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties. Seller shall have the right to update Appendix 2 and Appendix 3 to Exhibit L without the consent of Buyer solely to account for the final equipment integrated into the Project.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of

the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

## ARTICLE 14
## Force Majeure

14.1 Definition of Force Majeure Event.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises, after the Execution Date , that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic, including COVID-19, shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this PPA is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its

design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Solar Energy Output of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws or material or Serial Defects; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of three hundred sixty five (365) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this PPA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter;

provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however,* that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Solar Energy Output from the Project or to deliver Solar Energy Output from the Project, then any lost production (MWh) during the Force Majeure Event shall be excluded from the determination of the Monthly Solar Output Payment as set forth in Section 8.1.

## ARTICLE 15
## Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any material violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have upon the generation of Solar Energy Output, good and marketable title to the RECs, Environmental Attributes, and Future Environmental

Attributes.

(K) Seller has not sold, delivered or transferred the RECs, Environmental Attributes or Future Environmental Attributes to any other Person, in whole or in part.

(L) All right, title and interest in and to the RECs, Environmental Attributes and Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, §§ 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this PPA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(P) This PPA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(Q) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or

affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1, and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

## ARTICLE 16
## Insurance

16.1 Evidence of Insurance. Except with respect to builder's risk insurance, evidence of which shall be provided to Buyer within five (5) Business Days after the start of construction, Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G-1 and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences

during the Term of this PPA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G-1 within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this PPA, to request Seller to modify the insurance minimum limits specified in Exhibit G-1 in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this PPA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G-1 names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G-1 shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17
## Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Each Party shall at all times comply with all Applicable Laws and Seller shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the PPA. Seller shall give all required notices, shall timely procure and maintain all Seller required

permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this PPA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval, in connection with (i) the execution and performance of this PPA; (ii) a final order or other regulatory determination from the NMPRC (A) that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement and (B) approving revisions to the Special Services Contract; (iii) any waivers as set forth in Buyer's request for approval of this PPA; (iv) location of the Project and (v) the execution and performance of the additional renewable energy procurement under the Special Service Contract (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to a motion for rehearing or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller, Retail Customer and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this PPA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This PPA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if neither Buyer nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made by Buyer or Retail Customer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this PPA should remain in effect. Upon automatic termination, this PPA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller,

less any amounts due from Seller to Buyer.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA. If the Parties and Retail Customer are unable to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties and Retail Customer conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by December 31, 2025 ("**Regulatory End Date**"), then following an additional one hundred eighty (180) Day period after the Regulatory End Date (solely if such Regulatory End Date has not previously been extended; otherwise, no such one hundred eighty (180) Day period shall apply), the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the end of such additional one hundred eighty (180) Day period (or no later than fifteen (15) Days after the Regulatory End Date, if the Regulatory End Date has previously been extended) regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.. Provided, that the Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party

any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

17.6 Interconnection Agreement. The Parties acknowledge that the Interconnection Agreement is not currently in compliance. The Seller shall use commercially reasonable efforts to bring the Interconnection Agreement back into compliance; provided that, to the extent Seller has not been successful by the Regulatory End Date (as may be extended pursuant to Section 17.3(B), then this PPA shall automatically terminate ten (10) Days thereafter and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person. Provided, that the Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

## ARTICLE 18
## Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this PPA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA.

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this PPA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this PPA or that any then-existing default is cured no later

than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this PPA with the Affiliate as if such Person had been named under this PPA; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this PPA made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this PPA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this PPA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this PPA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this PPA to Seller's Senior Lenders pursuant to this Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Senior Lenders substantially in the form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this PPA.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed Solar Capacity ("**Development Security"**) within the earlier of (i) ninety (90) Days after the Execution Date and (ii) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed Solar Capacity (the "**Delivery Term Security**"). Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer. Promptly after Buyer terminates this PPA as a result of Seller's failure to achieve Commercial Operation on or before the Guaranteed Start Date, Buyer will return the Development Security to Seller, less any amounts drawn against the Development Security pursuant to Section 12.10. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or Capacity Shortfall Damages and provided the Delivery Term Security. In the event that no amounts are due and owing under this PPA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) day after termination of this PPA in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) days of expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a)

the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have fifteen (15) Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this PPA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this PPA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this PPA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this PPA, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this PPA.

## ARTICLE 20
## Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its

Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses, and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21
## Governmental Charges

21.1 Allocation of Governmental Charges. In the event of any contradiction between this Section 21.1 and Section 9.7, Section 9.7 shall control. In the event of any contradiction between this Section 21.1 and Section 22.2, this Section 21.1 shall control. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Solar Energy Output that are imposed on the making available of Solar Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Solar Energy Output that are imposed at and from the taking of Solar Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

## ARTICLE 22
## Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of

this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956); and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Certain Third Party Beneficiary Rights.

(A) In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly permitted in this PPA in Section 22.4(B), nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this PPA, Retail Customer is an express third-party beneficiary to this PPA. The provisions of this PPA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as an express third party beneficiary hereof as if it were a Party hereto. In addition, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer a copy of any notice of a change in the location of the Site provided to Buyer under Section 3.3;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project; and

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the PPA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the PPA to automatically terminate under Section 17.3(B)(3) without

the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed.

provided, that the rights granted to the Retail Customer pursuant to this Section 22.4(B) shall expire, terminate and be of no further force and effect upon the expiration or termination of the Special Service Contract, regardless of the cause. Any termination or expiration of the Special Service Contract shall not otherwise affect the rights and obligations of the Buyer and Seller as set forth in this PPA.

(C) Buyer shall provide prompt notice (and in any case within five (5) Days) to Seller of any termination of the Special Service Contract.

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to its employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a

view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this PPA, this PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7. Buyer shall request expedited process for any NMPRC approval of any amendment if any such approval is deemed necessary.

22.10 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

22.12 Counterparts. This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this PPA shall be brought in the United States District Court for the District of New Mexico; the Parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS PPA. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "**Receiving Party**" refers to the Party receiving information from the other Party.

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, tax credit transferees, technical advisors, contractors, consultants, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this PPA, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this PPA that relates solely to this PPA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this PPA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall notify Buyer as soon as reasonably practicable of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("**Data Breach**") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access. Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this PPA and the Environmental Attributes that are to be generated under this PPA and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this PPA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this PPA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s) (if any), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement.. The Parties intend that this PPA constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(II).

22.18 Accounting Matters The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the PPA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the following provisions apply for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and

mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

(F) Seller shall provide Buyer all such information as Buyer shall reasonably request for Buyer or Retail Customer compliance with the Scope Reporting Rule.

22.19 Telephone Recording. Each Party to this PPA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this PPA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this Agreement in accordance with Section 12.4. In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any actual, potential, threatened, or requested breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Governmental Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. Seller will ensure that the contractors and subcontractors it retains in connection with this PPA expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to an Event of Default under Section 12.1(B), Buyer shall have no obligation to make further payments hereunder following termination of this Agreement other than all payments due to Seller during the Term of this Agreement as of such termination date.

22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party to be responsible for, exporting and importing any equipment or property Seller or Seller Parties require to perform the services under this Agreement, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority.

(B) In no instance may Seller or Seller Parties list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List, or (ii) originated, offloaded or transferred to a different ship or carried in any Sanctioned Territory.

(D) The Seller shall provide to Buyer all Trade Control related documentation as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with) or respond to inquiries from any Government Authority in relation to, Trade Controls.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not (directly or indirectly) engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure that the Seller Parties it retains in connection with the performance of its obligations under this Agreement expressly agree in writing to the trade controls undertakings, representations, and warranties substantially similar to the provisions in this Section 22.21.

(H) Notice. If (a) Seller becomes aware that any breach of the terms of this Section 22.21 has occurred, is likely to occur, or (b) Seller or any Seller Party has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days of obtaining knowledge thereof.

(I) Excusal and Release. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal or not reasonably practicable under Sanctions.

(J) Subject to Section 12.1(B)(8), Buyer may terminate this Agreement, within five (5) days and without further liability, upon written notice to the Seller, if the Seller has breached this Section 22.21 (A), (B), (C), or (E) in which case, the Buyer shall have no obligation to make further payments following termination of this Agreement; provided that to the extent permitted by Sanctions, Buyer has made all payments due to Seller during the Term of this Agreement as of the termination date.

22.22 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, Retail Customer's load or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this PPA, the Parties and Retail Customer shall negotiate in good faith to amend this PPA to resolve such changes in order to effect performance of this PPA, at the least possible cost to the Parties and Retail Customer, consistent with this PPA, including Section 7.4(A).

*[Signature page(s) follow]*

IN WITNESS WHEREOF, the Parties have caused this PPA to be duly executed as of the date first above written. This PPA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

Name [•] Omni Warner

Title [•] Vice President Operations & Engineering

FOUR MILE MESA SOLAR, LLC

By: _____

Name HY MARTIN

Title: AUTHORIZED SIGNATORY

**EXHIBIT A**
(to Power Purchase Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: FOUR MILE MESA

2. Location: San Juan County, NM

3. Owner (if different from Seller): N/A

4. Operator: Seller or Affiliate thereof

5. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): SOLAR PV

   b. Total number of units at the Project: TBD

   c. Total nameplate capacity (MWp): 130MWdc

   d. Total capacity at point of delivery: 100 MWac

   e. Additional technology-specific information: Single axis solar tracker with solar photovoltaic cells

6. Project Schedule:

| Key Milestone | Date |
|---|---|
| LGIA Execution | December 31, 2025 |
| Major Equipment Supply Agreements Executed | June 30, 2026 |
| Discretionary Permits | September 1, 2026 |
| Close Financing | September 1, 2026 |
| 30% Design Complete | July 1, 2026 |
| Start of Project Construction | October 15, 2026 |
| First Major Equipment Delivered to Site | December 15, 2026 |
| Interconnection In-Service Date | March 15, 2027 |
| Commissioning Start Date | May 1, 2027 |
| Expected Commercial Operation | December 31, 2027 |
| Guaranteed Start Date | September 30, 2028 (unless otherwise extended) |

7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.

**Site Map**

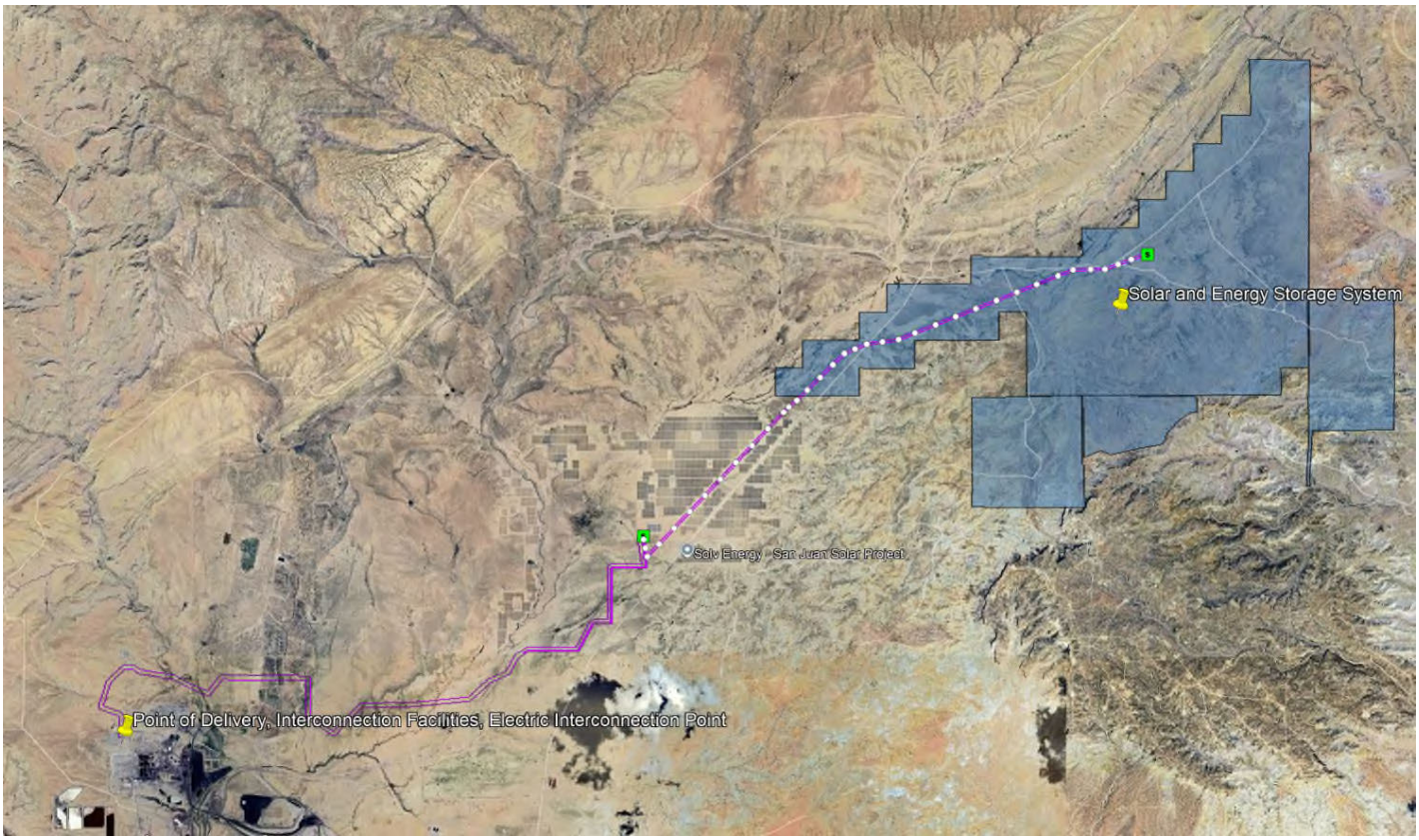

**EXHIBIT B**
(to Power Purchase Agreement)

**ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram and communications and telemetry diagram of the Project. The diagrams indicate the following:

   - Interconnection Facilities;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
   - communications and telemetry configuration with associated redundancy;
   - the House Energy power source and associated dedicated electric meter, and redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

   i. The Interconnection Agreement is currently in suspension. Seller shall unsuspend, and is planning to un-suspend in Q2 2025, with an estimated 19-month construction schedule.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is SAN JUAN NORTH STATION.

# Single Line Diagram

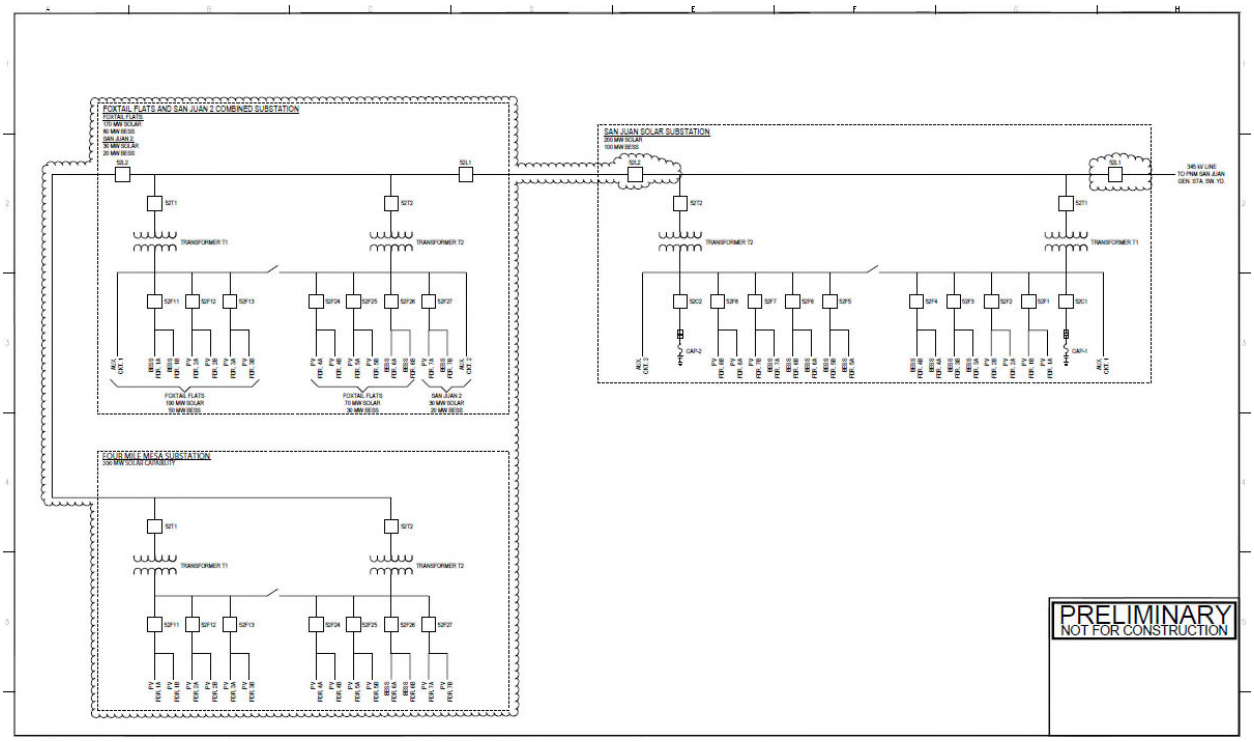

**EXHIBIT C**
(to Power Purchase Agreement)

**DESCRIPTION OF SITE**[1]
FOUR MILE MESA

SURVEYOR'S DESCRIPTION of: SAN JUAN COUNTY, State of New Mexico, and being more particularly described as follows:

New Mexico Principal Meridian T. 31 N., R. 14 W, Sec. 24: E½ (341.97 acres); E½ SW¼ (80.00 acres); SW¼ SW¼ (40.00 acres); Sec. 25: ALL (658.51 acres); Sec. 26: S½ (320.00 acres); E½ NE¼ (80.00 acres); SW¼NE¼ (40.00 acres); Sec. 27: S½ S½ (160.00 acres); Sec. 32: SE¼ (159.89 acres); Lot 2 (39.95 acres); Sec. 33: NE¼ (160.00 acres); NE¼ NW¼ (40.00 acres); S½ NW¼ (80.00 acres); N½ SW¼ (80.00 acres); Sec. 34: E½ (319.30 acres); N½ NW¼ (80.00 acres); SW¼ NW¼ (40.00 acres); Sec. 35: ALL (638.76 acres); Sec. 36: ALL – LESS and EXCEPT Lot 7 (604.08 acres)

The above described Tracts of Land contains 3,962 acres more or less in area.

[1] NTD: To be updated ~60 days prior to COD.

**EXHIBIT D**
(to Power Purchase Agreement)

**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**Notices:**

**Delivery Address:**

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

**Invoices:**

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:
PNMEAM@pnmresources.com

**Scheduling:**

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

**Payments:**

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

**Wire Transfer:**

Wells Fargo Bank
ABA# [●]
Albuquerque, New Mexico
ME Whsle Pwr Depository: [redacted]
Attn: EA-Wholesale Power Marketing

**Contract Manager:**

**FOUR MILE MESA SOLAR, LLC**

**All Notices/Invoices:**

**Delivery Address:**

Four Mile Mesa Solar, LLC
c/o DESRI Asset Holdings, L.L.C.
575 Fifth Avenue, 24th Floor
New York, NY 10017
Attn: General Counsel
Email: Notices@desri.com
Hy.martin@desri.com

Mailing Address (if different from above): N/A

**Wire Transfer:** As specified on invoices

**With additional Notice of an Event of Default, termination and other legal notices to:**

Four Mile Mesa Solar, LLC
c/o DESRI Asset Holdings, L.L.C.
575 Fifth Avenue, 24th Floor
New York, NY 10017
Attn: General Counsel
Email: Notices@desri.com
Hy.martin@desri.com

With a copy to (which shall not constitute notice):

Foley & Lardner LLP
150 East Gilman Street, Suite 5000
Madison, WI 53703
Attn: R. Lynn Parins
Email: lparins@foley.com

Public Service Company of New Mexico
Attention: [●]
2401 Aztec Rd. NE
Albuquerque, NM 87107
Telephone: (505) [●]
Fax: (505) [●]

**With additional Notice of an Event of Default, termination and other legal notices to:**

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

**With a copy to:**

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

**Project Manager:**

[●]
Attn: [●]

[●]

# EXHIBIT E

(to Power Purchase Agreement)

## SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

| PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION | GOVERNMENTAL ENTITY |
|---|---|
| NEPA Finding of No Significant Impact | Bureau of Indian Affairs Southwest Region Office |
| Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES) | Environmental Protection Agency (EPA) |
| San Juan County New Commercial/Additional Structures Permit | San Juan County |
| National Historic Preservation Act Section 106 Finding of Eligibility, Consultation and Approval | New Mexico State Historic Preservation Office and Ute Mountain Ute Tribal Historic Preservation Office |
| San Juan County Floodplain Permit (if required) | San Juan County |
| Location Approval, per NMSA 1978, § 62-9-3 | New Mexico Public Regulation Commission |
| | |
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NOTE: Final actual permit requirements may vary from the above listings due to code and regulatory requirements as needed for Project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of this PPA.

# EXHIBIT F

(to Power Purchase Agreement)
**COMMISSIONING AND ANNUAL TESTS**

**Commissioning Tests**

- String Insulation Resistance and Continuity Tests
- String $V_{oc}$ measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent) SCADA Functionality Test (or equivalent)
- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- Voltage Setpoint Functionality Test
- Historian Data Link Functionality Tests (See Section 3.4)
- Project Reliability Test
- Commissioning Performance Test (See Section 10.8)

**Annual Tests**

- Annual Performance Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

**A.** SCADA Functionality Test

-

**Purpose:**

This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering ("**POE**"). This test must be performed prior to energization of the Project.

**Procedure:**

Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall then contact Buyer's POE Team 4-6 weeks in advance to submit a database modification request (DBMOD) and request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. Testing phases 1-3 (below) require only POE contacts, but phase 4 will also require Buyer's Operator support.

The test shall include, but is not limited to, the following verification:

1) Status points

- Verify POE is receiving the intended state of Seller's switches and breakers
- Verify POE can see and change the value of states of Seller's switches and breakers
- Verify the functionality of the local/remote mode indication status

2) Analog points
   - Verify POE is receiving the intended value
   - Verify POE receives a changed value
   - Verify values have the correct scaling

3) Accumulator points (as applicable)
   - Verify POE is receiving an inserted value
   - Seller reverts to original value then verifies POE receives the new value
   - Verify values have the correct scaling

4) Control points (as applicable)
   - Verify the functionality of all breakers to be controlled by Buyer's POE
   - Verify the functionality of all switches to be controlled by Buyer's POE
   - Verify POE can control all reclosers
   - Verify on-site personnel have capability of changing states and values
   - Verify the functionality of all Setpoints
   - Verify the functionality of all feedback points

Completion of this test will be acknowledged verbally between Buyer's personnel and the stakeholders involved. This test must be repeated for changes to the states table(s) and/or list of points.

**B.** Automatic Generation Control (AGC) Functionality Test

**Purpose:**

This test will demonstrate the ability of the Project to synch to AGC. This test will occur after the Project has energized.

**System starting state:**

The Project will be in the on-line state and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("**EMS**") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

**Procedure**:

Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team four (4) to six (6) weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour operational activities.

**Remote Mode Testing**

Seller will set the Project to REMOTE mode, and verify the Project accepts AGC.

- Operator will send a setpoint to the Project
- Validate the Project responds to the setpoint
- Operator will send a setpoint above and/or below Project operation limits
    - Validate the Project sends alarms

Buyer's Operator will set the AGC Control mode to MARKET:

- Validate the Project responds to a DOT from CAISO
- Validate the setpoint and feedback matches the DOT

Buyer's Operator change the Project to MARKET in AGC

- Validate the Project changes the control mode

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG

- Hold for up to 10 minutes
- Validate the Project responds to ACE of +/- 10 MW

**Local Mode Testing**

On-site personnel change the Project to LOCAL mode

- Validate the Project changes from REMOTE to LOCAL mode
- Validate the Project follows gross MW requested on-site
- Validate the Project does not respond to setpoint changes

**System end state:**

The Project will be in the on-line state and with control mode set to LOCAL.

**C.** Voltage Setpoint Functionality Test
**[LATER]**

**D.** Buyer Data Link Functionality Test

The Buyer Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Project control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party), and assist as necessary to set up the Buyer Data Link.

Seller shall prepare and submit to Buyer a Data Link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Buyer Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Buyer Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

**E.** Project Reliability Testing

**D.1 Operational Reliability**

A. Purpose of Test

To demonstrate the short-term reliability of the Project.

B. Test Procedure

The Project shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the Project remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any material alarms, faults, trips, or manual intervention required.

**F. Performance Testing**

**Purpose**

This Section outlines the procedures and requirements for the Commissioning Performance Test and the Annual Performance Tests (each, a "Performance Test"), and will verify the plant is operating according to specification by achieving the Guaranteed Solar Capacity during the Commissioning Performance Test and the Annual Performance Test Guarantee during the Annual Performance Tests, under and pursuant to Section 10.9(A) of this PPA.

**Definitions**

"Annual Degradation" – The agreed upon annual AC degradation rate of the system is as defined in Section 10.8(C) and Exhibit K of the PPA.

"Annual Performance Test PVSYST Model" – The Annual Performance Test PVSYST Model including any post-processing that is based on the as-built drawings and adjusted for degradation, soiling, and albedo as discussed within this Exhibit F. The model will include the Annual Degradation, measured albedo and soiling during the test and remove any assumptions for snow and availability.

"Annual Performance Test Guarantee" – An average Performance Test Guarantee Ratio of at least ninety-five percent (95%).

"Minimum Data Points" – Occurs when at least 150 allowable 5-minute qualifying data points meeting the requirements set forth in this Exhibit F are recorded after all data filtering has occurred as outlined herein.

"Model Rated Power" – The value produced by the regression of filtered PVSYST model power and filtered model weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Model Rated Power as calculated shall account for losses to the Point of Delivery and shall be determined using the procedures outlined herein. Parties shall work in good faith to adjust losses in the event they are impacted by additional project phases on a shared line. Regression of Model Rated Power data points shall be performed for the thirty (30) Days centered about the Performance Test Measurement Period. Range of irradiance values which exceed Reporting Condition Total Plane of Array Irradiance +/- 30% will be

excluded, unless poor testing conditions and schedule constraints require up to 50%.

"Reporting Conditions" – The Total Plane of Array Irradiance ($POA_{total}$), ambient temperature, and wind speed calculated by taking the median of the measured data set during the Performance Test Measurement Period will be used as the reporting conditions using the procedures outlined in general accordance with ASTM E2939 and this Exhibit F.
"Performance Test Measurement Period" – The period when the Performance Test is performed, which period shall be at least two (2) Days and shall continue for consecutive additional Days until the Minimum Data Points have been met, which may be up to a total of ten (10) days, depending on weather conditions during the test. If after ten (10) Days the Minimum Data Points have not been achieved, the data collected will be used provided at least 150 qualifying data points of five-minute duration have been collected. Notwithstanding the above, if the Parties mutually agree that a sufficient quantity of qualifying data points have been collected during a test to determine an accurate test result, the duration of the Test and the quantity of required qualifying data points required herein may be reduced.
"Performance Test Ratio"– The Test Rated Power divided by the Model Rated Power, calculated to the nearest 0.1%.
"Revenue Meter" – The revenue meter for the Project shall be the revenue grade Primary Metering Device installed at the high side of each GSU, or as otherwise mutually agreed by the Parties.
"Test Rated Power" – The value produced by the regression of filtered site measured power and site measured weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Test Rated Power of the Generating Facility shall account for losses to the Point of Delivery and shall be calculated using the procedures outlined herein.
"Total Plane of Array Irradiance ($E_{TOTAL}$)" – The sum total of the front plane of array irradiance and the rear plane of array irradiance multiplied by the Bifaciality Factor of the modules as shown in Equation 1 below. For Test Rated Power the $E_{REAR}$ will also be multiplied by the Rear Shading Factor defined in Table 2 of Appendix 2 to account for loss between the rear POA sensor and the module.
Equation 1:

$$E_{TOTAL} = E_{POA} + E_{REAR} * \varphi * R_{SH}$$

Where

$E_{POA}$ = Measured front side POA
$E_{REAR}$ = Measured rear side POA
$\varphi$ = Bifaciality Factor as defined on the manufacturer's datasheet
$R_{SH}$ = Rear shading factor

In the event monofacial panels are used, Parties will work in good faith to modify this equation accordingly.

**Performance Test Procedure**

1. Battery system will be turned off over testing interval. In the event battery impacts performance or completion of test, parties will work in good faith to cease battery operations or modify procedure.

2. At least ninety (90) Days prior to the first day of the first Performance Test Measurement Period, a draft Performance Test Plan, including a detailed Performance Test Procedure shall be submitted to the Buyer by the Seller for Buyer's review and comment. The Performance Test Procedure shall:

   2.1. be in general accordance with ASTM E2848 and ASTM E2939 or other ASTM standards as mutually agreed by the Parties;

   2.2. include the PVSyst model to be utilized for determination of Model Rated Power. The PVSyst model for the Commissioning Performance Test shall result in a total Annual Generation Forecast that meets or exceeds the Annual Generation Forecast included in Exhibit L;

   2.3. include the 8760 generation forecast resulting from the PVSyst model, including the following columns;

      2.3.1. Date & Time (MM/DD/YYYY hh:mm)

      2.3.2. Plane-of-Array Irradiance Front (Globinc, W/m2)

      2.3.3. Plane of Array Irradiance Rear (GlobBak, W/m2)

      2.3.4. Module Temperature (TArray, °C)

      2.3.5. Ambient Temperature (TAmb, C)

      2.3.6. Near Shadings Beam Loss (ShdBLss, W/m2)

      2.3.7. Inverter Limitation due to Minimum Voltage (IL_Vmin, kW)

      2.3.8. Inverter Limitation due to Maximum Power (IL_Pmax, kW)

      2.3.9. Available Energy at Inverter Output (EOutlnv, kW)

      2.3.10. Energy Injected into Grid (E_Grid, kWh)

   2.4. include the linear regression coefficients for the full 8760 generation forecast; and

   2.5. include a completed Appendix 2 of this Exhibit F, including the PVSyst model inputs and assumptions utilized in the PVSyst model.

   Seller shall incorporate all of Buyer's reasonable comments into the final Performance Test Plan and Performance Test Procedure and resubmit the same for Buyer's confirmation of conformance with this Exhibit F and applicable ASTM standards (such approval not to be unreasonably withheld or delayed).

3. The Seller shall give written notice to the Buyer in accordance with Section 10.2 of this PPA for the Commissioning Performance Test and at least ten (10) Business Days prior to the start of any Annual Performance Test.

4. Seller shall perform the Performance Test in accordance with the final approved Performance Test Procedures described within this Exhibit F and any agreed modification thereof.

5. Performance Test Procedures shall identify the final Reporting Conditions and Model Rated Power using the Annual Performance Test PVSYST Model, and data filters described below.

6. The following input parameters shall be measured during the Performance Test (collectively, the "Input Parameters"):

- Front Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the front side of the PV array in the Project during the qualifying data points. Any significant shading during any aggregation interval is cause to exclude that data record from the regression.
- Rear Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the rear side of the PV array in the Project during the qualifying data points.
- Ambient Temperature: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit F.
- Wind Speed: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit F.
- Soiling: Soiling loss in the Annual Performance Test PVSYST Model shall utilize the lesser of (i) the measured value during the test, (ii) values measured on site from mutually agreed PV array samples or (iii) a value of 1.25% or otherwise as mutually agreed by the Parties.
- Revenue Meter Energy Generation: Energy as recorded by the Revenue Meter and accounting for losses to the Point of Delivery during the Performance Test Measurement Period.
- Inverter-Level Power Generation: AC output data for each inverter shall be provided for the purposes of identifying periods of inverter clipping.
- Inverter-Level Power Factor: Power factor output data for each inverter shall be provided for the purposes of identifying periods of inverters performing outside of the designed power factor threshold.

7. During the Performance Test Measurement Period, irradiance, power generation and other data shall be reported at no greater than one (1) minute intervals, consisting of averaged sampled data. All data shall be reported in time-synchronized intervals.
8. Data shall be averaged and filtered in accordance with the procedures below:
   8.1. Missing Data: Missing records shall be marked as missing with a non-numeric identifier. Missing records shall not have a value included in the analysis but shall be documented. At least 75% of plane of array sensors for each measured parameter must be operational to consider data points as valid.
   8.2. DAS Equipment Malfunction: Data records with invalid Input Parameters (e.g. all sensor readings reported as out of range by the DAS) shall also be marked as invalid. If more than a few averaging intervals in a data collection period are affected by DAS errors or equipment malfunctions, Seller shall investigate and resolve this condition prior to proceeding with the test.
   8.3. Below Minimum Irradiance: To avoid large uncertainty in results due to increased impact of variable losses at low irradiance, all records with a minimum Total Plane-of-Array

Irradiance input parameter of 400 W/m$^2$ or less shall be marked as irradiance too low and the data will not be used in the test.

8.4. Unstable irradiance: Irradiance measurements shall be deemed stable if i) all individual sensor readings are within 10% of the average of all the sensor readings and ii) the average of all sensor readings is not more than 50 Watts per meter squared greater or less than the previous interval reading. If both conditions above are not met, the irradiance will be deemed unstable, flagged and the data will not be used in the test. This filter may be adjusted to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

8.5. Inverter Clipping: Any intervals where the power output of one (or more) inverters is greater than 98.0% of the rated or programmed power limit. This data will be excluded from the test data.

8.6. Meter Clipping: Any interval where the power output of the Revenue Meter is greater than 98.0% of the rated Point of Interconnection limit of the Project. This data will be excluded from the test data.

8.7. Power Factor: Any intervals where the inverter power factor is less than ±0.95 will be excluded from the test data. This filter may be adjusted/removed to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

8.8. Array shading by internal (array self-shading) or external (nearby objects). A schedule of expected shade times shall be defined in the Performance Test Procedures. This schedule may be altered during the Performance Test. Internal shading occurring during these shade intervals identified during testing shall be noted and considered as included in the design. Photographic evidence of array conditions shall be provided.

8.9. Array shading by environmental conditions (e.g. frost, snow or debris). Onsite observers shall record time intervals when such conditions exist as the Performance Test progresses. Photographic evidence of array conditions shall be provided and records occurring during these shade intervals identified during testing shall be marked as shaded and excluded from the test.

8.10. Wind Speed: Any intervals where average wind speed is greater than 15 meter per second, trackers go into a stow position or the panels are placed into hail stow due to a hailstorm will be excluded from the test data. This filter may be adjusted/removed to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

8.11. Any intervals impacted by system outages will be excluded from the test data including a) curtailment of the Project, b) shut down for maintenance, c) disconnection of the Project from the grid, d) power regulation by the grid operator, e) a Force Majeure Event, or f) any time when the Project is not 100% available.

9. Data will be collected until, at a minimum, the Minimum Data Points have been achieved.

10. Using the data filtering described herein, calculate the linear regression coefficients and Test Rated Power.

11. Only data from records where input parameters are valid and within specified limits shall be

used in computing capacity estimates.

12. Calculate the Performance Test Ratio using the calculated Test Rated Power and appropriate Model Rated Power. For clarity, the Test Rated Power and Model Rated Power calculations are performed in accordance with ASTM E2848 guideline, however, all procedures outlined herein will take precedence over the ASTM E2848 guidelines.
13. Seller shall not apply test tolerances or measurement uncertainty to the test data or model results. Seller shall strive to minimize test tolerance and measurement uncertainty.
14. If the Performance Test Rating of the Project does not meet or exceed the Guaranteed Solar Capacity during the Commissioning Performance Test or the Annual Performance Test Guarantee during an Annual Performance Test, the Seller may re-conduct the test in accordance with Section 10.8(E) of the Agreement.

Restrictions and exclusions that prevent or inhibit performance or completion of a scheduled test, as outlined in this procedure (i.e. too low irradiance over the specified interval, too many excluded intervals) shall result in rescheduling of the applicable Performance Test.
The Performance Test Procedures provided by Seller to Buyer shall include (at a minimum) the following information:

- This test procedure
- Identification of key personnel and parties to be involved in the test
- The applicable Performance Test PVSYST Model
    - For the purposes of the Performance Test, the Annual Performance Test PVSYST Model shall include module/system Annual Degradation and assume 100% availability.
    - Meteorological data
- Identification of the Project under test (at a minimum)
    - Number and make/model of PV modules
    - Array orientation
    - Location (latitude, longitude, street address)
    - Racking type and tilt
    - Tracker range of motion (if applicable)
    - Number and make/model of Inverters
    - Row to row spacing (ground coverage ratio)
- Identification of all data points to be monitored during the test
- The starting and ending dates of the scheduled Performance Test Measurement Period.
- Table of all sensors and transducers to be used, including cut sheets, calibration records, map of sensor locations with sufficient detail to allow observers to locate the sensors and transducers. This includes sensors required for all applicable Input Parameters (MET station sensors, inverters, and Revenue Meter).
- Calibration records for all instrumentation, sensors, and transducers used for the test verifying that such calibration has been performed within twelve ()such period of time as may be recommended by the device manufacturer.
- All data identified in Appendix 2 to this Exhibit F.

Measured data is to be made available to the Buyer upon request during the Performance Test Measurement Period, for use in evaluating the progress of the Performance Test.

**Performance Test Report**

No later than fifteen (15) Business Days following the end of the Performance Test Measurement Period (as such may be repeated due to a re-test, if applicable), a Performance Test Report will be submitted to the Buyer by the Seller. Buyer shall have ten (10) Business Days to accept or reject the results of the Performance Test Report, and provide in writing any comments of Buyer on such Performance Test Report. In the event that Buyer rejects all or any part of the draft Performance Test Report, Seller shall, within five (5) Business Days thereafter address any comments of Buyer and re-submit the Performance Test Report to Buyer. This procedure shall continue until Buyer accepts the Performance Test Report. Any dispute regarding the results of the Performance Test or the Performance Test Report shall be resolved as indicated in the Agreement. The Commercial Operation Date shall otherwise be determined in accordance with Section 3.10 of the PPA.

The Performance Test Report shall contain:

- The Performance Test Procedures, including all requirements as outlined herein.
- The actual start and end date/times of the Performance Test Measurement Period
- Parties present for the execution of the Performance Test
- Comments on environmental conditions during the Performance Test Measurement Period that affect the results of the test
- Performance model simulations, including all inputs, functional calculations and results
- Summary of test results
- Regression coefficients used to calculate Model Rated Power and Test Rated Power
- Comparison of test results with Annual Performance Test Guarantee.

All raw data used as input to the Performance Test shall be provided electronically (via CSV, XLS, or XLSX formats) to the Buyer with the Performance Test Report.

# EXHIBIT F - APPENDIX 1:
# ADDITIONAL REQUIREMENTS

## Sensor Requirements

Front plane of array irradiance sensors shall be at a minimum "High Quality" classified pyranometer(s) as defined in ASTM2848-A1.2 (Secondary Standard per ISO 9060). Pyranometers shall include device-specific characterization data that shall, at minimum, include cosine and temperature response. Alternative pyranometers may be used if necessary.

Pyranometers shall be used only within their valid calibration period and shall be cleaned at the start of the Performance Test Measurement Period and cleaned daily during the test if the Performance Test Measurement Period extends beyond one (1) week. Rear plane of array irradiance may be measured using either a high-quality reference cell (module) or a "High Quality" classified pyranometer(s) as defined in ASTM2848-A1.2 (Secondary Standard per ISO 9060).

| Measurement | Instrument Type | Test Function | Range | Accuracy |
|---|---|---|---|---|
| Plane of Array Irradiance | Front Facing Pyranometer Rear Facing Pyranometer | Primary for Performance Test | 0 to 1600 W/m$^2$ 285 to 2800 nm | ±2.0% daily |
| Global Horizontal Irradiance | Pyranometer | Tertiary for Performance Test | 0 to 1600 W/m$^2$ 285 to 2800 nm | ±2.0% daily |
| Ambient Air Temperature | Temperature Probe | Primary for Performance Test | -40°C to +60°C | ±1°C |
| Wind Speed | Sonic Wind Sensor | Primary for Performance Test | 0 – 60 m/s | ±5% |
| PV Plant Power | PV Power Revenue Meter | Primary for Performance Test | 0 to PV Power Plant size +20% | ANSI C-12.20 |
| Inverter Power | Inverter Meter | Primary for Performance Test | determined from inverter data sheet | determined from inverter data sheet |
| Soiling Loss | Soiling Stations<br>In-Field IV Curve | Primary for Performance Test<br>Secondary for Performance Test | 0 to 100% | |

## Multiple Measurements

Multiple Measurements shall be recorded for all environmental data throughout the Site in order to capture the operating conditions for all regions of the array.

Below are the main sensors to be used in the Performance Test:

- Front and rear plane of array irradiance (POA): Plane of Array readings shall be averaged from sensors installed.
- Ambient Air Temperature: Ambient temperature readings shall be averaged from sensors installed.
- Wind Speed: wind speed sensors shall be averaged from sensors installed.

- Soiling Station: At least four soiling stations, averaged readings will be used for multiple stations.
- Albedometer: At least four albedometers, averaged readings will be used for multiple sensors.
- Inverter Meter: The power and power factor reading for each inverter.
- PV Plant Meter: The power reading of the Revenue Meter.

# EXHIBIT F - APPENDIX 2: PERFORMANCE TEST PVSYST MODEL AND REPORTING CONDITIONS DEFINITION

## Performance Test PVSYST Model

The requirements for the Performance Test PVSYST Model to be used for evaluating the Test Rated Power is detailed in this Exhibit F. This section outlines all input parameters required to create the PVSYST simulation, in the event that PVSYST electronic project files are no longer available. This section shall be populated and submitted with the Performance Test Procedures.
The Performance Test PVSYST Model and the post-processed 8760 generation forecast accounting for any losses outside of the model shall be included within this Exhibit F. Post-processed losses shall be specifically identified in the 8760 forecast.
For Annual Performance Tests, the Performance Test PVSYST Model will be updated to the Annual Performance Test PVSYST Model prior to running the Performance Test to include the Annual Degradation.

## PVSYST Model Files

Table 2-1 below provides the file names for all model files necessary to run the PVSYST simulation in the PVSYST version specified in the subsequent section. Seller shall provide all Annual Performance Test PVSYST Model files to the Buyer including all files required to recreate the PVSYST modeling files including .ond, .pan, .shd, .met, .prj and .vc files. The PVSYST version, report, and output 8760 based on the specified TMY Meteorological data source shall be provided.

Table 2-1: PVSYST File Names

| PVSYST File Type | File Name |
|---|---|
| Project | To be provided |
| Variant 1 | To be provided; aligns with primary module |
| Variant 2 | To be provided; aligns with secondary module |
| Site | To be provided |
| Meteorological | To be provided |
| Panel | To be provided |
| Inverter | To be provided |

## PVSYST Input Parameters

This section documents all PVSYST inputs and assumptions. Table 2-2 below provides many of the PVSYST inputs required in the simulation.
Sixty (60) Days prior to performance testing of any portion of the solar project, the corresponding PVSyst model and inputs with the resultant 8760 generation forecast shall be submitted with the test procedure for Buyer review. Testing and approval for Commercial Operation will require that a PVSyst model and associated inputs and results be provided that represents the capability to

fulfill a minimum total annual generation of [*] GWh per year (as identified in Exhibit L) on a P50 probability basis as adjusted year over year for any applicable degradation.
Seller shall provide justification and supporting documentation for all of the circuit ohmic losses, inverter losses, transformer losses, and auxiliary loads identified in Table 2-2.

**Table 2-2: PVSYST Input Parameters**

| **Input Parameter** | **Value** | **Comment** |
|---|---|---|
| PVSYST Software Version | | |
| Transposition Model | | |
| Meteorological File | | |
| Latitude / Longitude | | |
| Altitude [m] | | |
| Array Orientation (PVSYST Field Type) | | |
| Tilt | | |
| Azimuth | | 0° is due South |
| Tracker Backtracking | | |
| Min / Max Rotation Angle | | |
| Number of sheds | | |
| Ground Cover Ratio (GCR) | | |
| Pitch [m] | | |
| Primary Module | | |
| Secondary Module | | |
| Collector width [m] | | |
| Primary Module | | |
| Secondary Module | | |
| Inactive band, Left (m) | | |
| Inactive band, Right (m) | | |
| Near Shading Type | | |
| Electrical Effect | | |
| Number of strings in row width | | |
| Horizon | | |
| Module Type | | |
| Primary Module | | x% primary module |
| Secondary Module | | y% secondary module |
| Qty. of modules | | |
| Primary Module | | |
| Secondary Module | | |
| Qty. of modules per string | | |
| Primary Module | | |

| **Input Parameter** | **Value** | **Comment** |
|---|---|---|
| Secondary Module | | |
| Qty. of parallel strings | | |
| Primary Module | | |
| Secondary Module | | |
| Inverter Type | | |
| Qty. of inverters | | |
| Inverter Loss | | |
| Heat Transfer: Constant loss factor | | |
| Heat Transfer: Wind loss factor | | |
| DC circuit ohmic loss at STC | | |
| Module Bifaciality Factor | | From datasheet (not PAN file) |
| Primary Module | | |
| Secondary Module | | |
| Module Quality | | |
| Primary Module | | |
| Secondary Module | | |
| Mismatch [%] | | |
| Primary Module | | |
| Secondary Module | | |
| LID – Light Induced Degradation [%] | | |
| Primary Module | | |
| Secondary Module | | |
| Soiling Loss [%] | | |
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |
| Annual Average | | |

| **Input Parameter** | **Value** | **Comment** |
|---|---|---|
| Incidence Angle Modifier Factors or ASHRAE b0 value | | |
| Rear Transparency | | |
| Primary Module | | |
| Secondary Module | | |
| Rear Shade Loss | | |
| Primary Module | | |
| Secondary Module | | |
| Rear Mismatch | | |
| Primary Module | | |
| Secondary Module | | |
| Module Mounting Height | | |
| Monthly Surface Albedo | | To be measured during Capacity Test. If a reliable measurement is not available the assumed albedo in the Project Model will be used, exclusive of any adjustment for snow on the ground. If snow or partial snow on the ground occurs during the Capacity Test Measurement Period, provisions will be made to ensure measured albedo is representative of the albedo for the entire site or the data will be removed. |
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |
| Annual Average | | |
| Auxiliary Loads [%] | | |
| Nighttime Loads [%] | | |
| AC circuit ohmic loss at STC [%] | | |

| Input Parameter | Value | Comment |
|---|---|---|
| AC circuit MV ohmic loss at STC | | |
| External MV Transformer No Load Loss [%] | | |
| External MV Transformer Full Load Loss [%] | | |
| AC circuit HV ohmic loss at STC | | |
| Terrain Loss [%] | | |
| External HV Transformer No Load Loss [%] | | |
| External HV Transformer Full Load Loss [%] | | |

**Additional Losses (Post-Processed Loss)**
There are multiple losses associated with an operating Project that may not be accounted for in PVSYST. Auxiliary load consumption shall be separately accounted for in the test results. Treatment of any additional adjustments impacting the Primary Metering Device in the event they impact the overall results of the test shall be as mutually agreed by the Parties.

**Reporting Conditions Identification**
The Reporting Conditions are to be specified based on the measured data set. The following procedure is recommended for identifying Reporting Conditions.

1. The Reporting Conditions shall be determined based on the measured data set. Data records shall include the measured Total Plane of Array irradiance ($E_{Total}$), ambient temperature and wind speed input parameters, as well as any auxiliary parameters necessary for marking data records according to the primary data exclusion criteria.
2. Apply the primary data exclusion criteria identified in Section 8 of this Exhibit F to the measured data records.
3. Grouping the remaining data records, compute the median values of $E_{total}$, ambient air temperature, and wind speed. The reporting condition for $E_{total}$ irradiance shall not be less than 500 W/m², unless otherwise agreed to by the Parties.
4. Round median $E_{total}$ irradiance to the nearest integer W/m², median temperature to the nearest °C, and median wind speed to the nearest 0.1 m/s. The calculated values represent the Reporting Conditions.

**Model Rated Power Identification**
The Model Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.
The following procedure shall be used by the Seller to calculate the Model Rated Power values.

1. To Calculate the Model Rated Power value, update and verify the applicable Performance Test PVSYST Model includes the following parameters:
    a. Availability and Curtailment Losses shall be assumed 0%
    b. Update soiling and albedo values
    c. Calculate Annual Degradation (for Annual Performance Tests)
2. The Performance Test PVSYST Model hourly output, after post-processing, must contain at a minimum the plane of array irradiance, the ambient temperature, wind speed, inverter energy output, modeled power generation, shade loss, and clipping loss (GlobInc, Globbak, TAmb, WindVel, EOutInv, Egrid, POI Limited, ShdBLss, and IL Pmax) respectively. For clarity:

    $$\text{Model } E_{total} = \text{GlobInc} + \text{Globbak}*BF$$

    BF = Module Bifaciality Factor of the bifacial modules used in the Performance Test
3. Procure data records from the Performance Test PVSYST Model.
4. For Annual Performance Tests, adjust total generation output from the Performance Test PVSYST Model to account for the Annual Degradation by multiplying all positive generation intervals by one minus the Annual Degradation.
5. Apply the data exclusion criteria identified in Section 8 of this Exhibit F to the simulation data records.
6. Calculate the regression coefficients for the Performance Test Measurement Period from filtered data with a Total Plane of Array Irradiance within +/-30% of the Total Plane of Array Irradiance Reporting Condition.
5. Calculate Model Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation below:

    $$P_{RC} = E_{RC}(a_1 + a_2 \cdot E_{RC} + a_3 \cdot T_{RC} + a_4 \cdot v_{RC})$$

    Where:
    $P_{RC}$ = Rated Power
    $E_{RC}$ = Total Plane of Array Irradiance Reporting Condition
    $T_{RC}$ = Temperature Reporting Condition
    $v_{RC}$ = Wind Speed Reporting Condition
    a1 to a4 = Regression coefficients

**Test Rated Power Identification**

The Test Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure will be used by the Seller to calculate the Test Rated Power values.

1. Procure measured data records including the meter output and inverter output data
2. Calculate the Test $E_{TOTAL}$

   $$\text{Test } E_{total} = \text{GlobInc} + \text{Globbak}*\text{BF}*\text{RearShade}$$

3. Apply the data exclusion criteria identified in Section 8 of this Exhibit F to the measured data records.
4. Compute regression coefficients for the Performance Test Measurement Period.
5. Calculate the Test Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation.

**Exhibit F-Appendix 3: PVsyst – Simulation Report**

**[To be provided.]**

**EXHIBIT G-1**
(to Power Purchase Agreement)

**INSURANCE COVERAGES**

Seller shall obtain and maintain the following insurance coverages, at a minimum:

**A. Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

**C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

**D. Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E. Network Security and Privacy Liability**. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

**F. Property Insurance**. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

**EXHIBIT G-2**
(to Power Purchase Agreement)

**FORM OF ATTESTATION AND BILL OF SALE**

Pursuant to WREGIS, _____ ("Seller") hereby sells, transfers and delivers to Buyer the RECs and Environmental Attributes associated with the generation of Energy at the Project, as detailed in the Power Purchase Agreement between the Parties dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

_____
Name of Renewable Energy Facility

| Fuel Type | Maximum Power Output (MW) | Operation Date |
|---|---|---|
| Dates | | MWh generated |
| _____, 20___ | | _____ |

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents, to the best of its knowledge, as follows:

1. to the best of its knowledge, the information provided herein is true and correct;
2. its sale to Buyer is its one and only sale of the RECS and Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such RECS and Environmental Attributes;
3. the Project identified above produced the number of MWh above during the period indicated above;
4. Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and
5. Seller owns the _____ _____. [Name of the Renewable Energy Facility]

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the above referenced Energy.

Contact Person: _____
Phone: _____; Fax: _____

[Seller]

Signed: _____
Name: _____
Title: _____
Date: _____

**EXHIBIT H**
(to Power Purchase Agreement)

**AVAILABILITY GUARANTEE**

Section 1. **Definitions.**

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the PPA.

"**Actual Solar Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Solar Available Hours for all Solar Units that were part of the Project at the beginning of the relevant Commercial Operation Year for all Daylight Intervals, divided by (ii) the sum of all Solar Period Hours in the relevant Commercial Operation Year for all Solar Units that were part of the Project on the Commercial Operation Date.

"**Actual Solar Energy Output**" means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

"**Aggregate Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Report**" has the meaning set forth in Section 2(5) of this Exhibit.

"**Daylight Interval**" means each hour where plane of array irradiance conditions are 100 W/m2 or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

"**Guaranteed Solar Availability Percentage**" has the meaning set forth in Section 2(1) of this Exhibit.

"**Solar Availability Damages**" has the meaning set forth in Section 2(2) of this Exhibit H.

"**Solar Availability Guarantee**" means the guarantee set forth in Section 2(1) of this Exhibit H.

"**Solar Available Hours**" means for each Solar Unit, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Solar Period Hours in such Commercial Operation Year, minus (b) the aggregate Solar Unavailable Hours for such Solar Unit in such Commercial Operation Year, plus (c) the aggregate Solar Excused Hours for such Solar Unit in such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Available Hours for such hour

shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity of the Solar Unit.

"**Solar Excused Hours**" means, in any Commercial Operation Year, (a) the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year, (b) all hours during which Compensable Curtailment occurs in such Commercial Operation Year, (c) all hours during which any Force Majeure Event occurs in such Commercial Operation Year, and (d) all hours during which Reliability Curtailment occurs in such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity of the Solar Unit.

"**Solar Period Hours**" means the number of Daylight Intervals within any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

"**Solar Unavailable Hours**" means those hours a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Energy to the Point of Delivery. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is unavailable, but for materially less than the full amount of its installed capacity, the Solar Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

Section 2. **Solar Availability Guarantee.**

1. Solar Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Solar Availability Percentage (i) equal to or greater than eighty-five percent (85%) averaged through the second full Commercial Operation Year of the Term and (ii) equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date ("**Guaranteed Solar Availability Percentage**").

2. Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed Solar Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Guaranteed Solar Availability Percentage minus the Actual Solar Availability Percentage for such Commercial Operation Year (both expressed as a decimal), multiplied by (z) the Actual Solar Energy Output for such Commercial Operation Year divided by the Actual Solar Availability Percentage (expressed as a decimal), multiplied by the Guaranteed Solar Availability Percentage (expressed as a decimal) (the "**Solar Availability Damages**"), but in no event in excess of the Annual Solar Availability Damages Cap and the Aggregate Solar Availability Damages Cap. A sample calculation of the Solar Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to SixtyThousand Dollars ($60,000) per MW of Guaranteed Solar Capacity ("**Annual Solar Availability Damages Cap**") and in the aggregate at a value equivalent to OneHundred and Fifty Thousand Dollars ($150,000) per MW of Guaranteed Solar Capacity ("**Aggregate Solar Availability Damages Cap**") over the Term of the PPA.

4. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed Solar Availability Percentage shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Section 12.1(A)(8) and (9) of the PPA, if and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail to meet the Guaranteed Solar Availability Percentage.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the PPA.

## ATTACHMENT 1 TO EXHIBIT H

## EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES

Example of Actual Solar Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 50 Solar Units were part of the Project.

The Solar Units had the following operating characteristics:

| | | Hours | Solar Units Affected | Solar Unit Hours |
|---|---|---|---|---|
| | Solar Period Hours ("PH") | 4,000 | 50 | 200,000 |
| | Solar Unavailable Hours ("UH") | | | 5,000 |
| | Solar Excused Hours ("EH") | | | 1,000 |

Given these assumed facts, the Solar Available Hours for the Solar Units during the Commercial Operation Year would be calculated as follows:

Sum of Solar Available Hours = PH – (UH + EH): 196,000 = 200,000 – 5,000 + 1,000

**Actual Solar Energy Availability Percentage**

Given these assumed facts, the Actual Solar Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

Sum of Solar Available Hours: 196,000 hours

Sum of Solar Period Hours: 200,000 hours

Actual Solar Availability Percentage: (Sum of Solar Available Hours/Sum of Solar Period Hours) x 100 = (196,000/200,000) x 100 = 98.0%

Example of Availability Damages

Example of Solar Availability Damages based on the following assumed facts:

Seller's Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.

Seller's Actual Solar Availability in Commercial Operation Year 4 = 85%.

Solar Energy Output Payment Rate = $20.00

Actual Solar Energy Output = 130,000 MWh

Given these assumed facts, Seller calculates the Solar Availability Damages due to Buyer as

follows:

Solar Energy Output Payment Rate x (Guaranteed Solar Availability Percentage in Commercial Operation Year 4 — Actual Solar Availability Percentage for Commercial Operation Year 4 (each expressed as a decimal)) x (Actual Solar Energy Output for Commercial Operation Year 4 ÷ Actual Solar Availability Percentage for Commercial Operation Year 4 x Guaranteed Solar Availability Percentage for Commercial Operation Year 4 (the latter two expressed as a decimal)) = Solar Availability Damage:

$20.00 x (.90 - .85) x (130,000 ÷ .85 * .90) = $137,647.06

**EXHIBIT I**

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

**A.** WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Power Purchase Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

**B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

**1.** **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

**(a)** Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].

**(b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty

(subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

**2. DEMANDS AND PAYMENT.**

**(a)** If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

**(b)** A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with *Section 9* below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

**(c)** After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

**(a)** it is a limited liability company duly organized and validly existing under the laws of the State of _____ and has the limited liability company power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

**(b)** no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and

**(c)** the execution, delivery and performance of this Guaranty has been duly and validly authorized by all limited liability company proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES;**

**(a)** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**(b)**

**5. AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6. WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

**(a)** Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and , for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty; (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (viii) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

**(b)** No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

**(c)** Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

**7. REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

**8. TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

**9. NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

| TO GUARANTOR: * | TO COUNTERPARTY: |
|---|---|
| [●]*Attn:* Treasurer | [●]*Attn:* |
| [Tel: [●] -- for use in connection with courier deliveries] | [Tel: [●] -- for use in connection with courier deliveries] |

Any Notice given in accordance with this *Section 9* will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10. MISCELLANEOUS.**

**(a)** This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.

**(b)** This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty, Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.

**(c)** This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

**(d)** The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

**(e)** Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**(f)** Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

**(g)** COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

**11.** **THIRD PARTY BENEFICIARY RIGHTS.** This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[●]

By:_____

Name:_____

Title:_____

**EXHIBIT J**
(to Power Purchase Agreement)

**COMMERCIAL OPERATION**
**FORM OF CERTIFICATION**

This certification ("Certification") of Commercial Operation is delivered by _____("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Solar Units with an aggregate capacity of at least [●] MW have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed Capacity and punch list items that do not adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Solar Energy Output and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

| [●] | **[Licensed Professional Engineer]** |
|---|---|
| Signature: _____ | Signature: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| | Date: _____ |
| | License Number and LPE Stamp: _____ |

**EXHIBIT K**
(to Power Purchase Agreement)

## ANNUAL DEGRADATION GUARANTEES

| Test at Beginning of Commercial Operation Year | Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity) | Maximum % Degradation from Prior Year Actual Degradation |
|---|---|---|
| 1 - Commissioning Test | 100.00% | 0.00% |
| 2 | 99.6% | 0.4% |
| 3 | 99.2% | 0.4% |
| 4 | 98.8% | 0.4% |
| 5 | 98.4% | 0.4% |
| 6 | 98.0% | 0.4% |
| 7 | 97.6% | 0.4% |
| 8 | 97.2% | 0.4% |
| 9 | 96.8% | 0.4% |
| 10 | 96.5% | 0.4% |
| 11 | 96.1% | 0.4% |
| 12 | 95.7% | 0.4% |
| 13 | 95.3% | 0.4% |

| Test at Beginning of Commercial Operation Year | Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity) | Maximum % Degradation from Prior Year Actual Degradation |
|---|---|---|
| 14 | 94.9% | 0.4% |
| 15 | 94.5% | 0.4% |
| 16 | 94.2% | 0.4% |
| 17 | 93.8% | 0.4% |
| 18 | 93.4% | 0.4% |
| 19 | 93.0% | 0.4% |
| 20 | 92.7% | 0.4% |

# EXHIBIT L
(to Power Purchase Agreement)

## ANNUAL GENERATION FORECAST

The following represents the annual P50 forecast of net, AC generation delivered to the Point of Delivery.

On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

| Month | On-Peak Energy Delivered (MWh) | Off-Peak Energy Delivered (MWh) |
|---|---|---|
| January | 11,567 | 3,461 |
| February | 14,372 | 2,708 |
| March | 20,377 | 2,923 |
| April | 22,866 | 3,637 |
| May | 24,596 | 5,843 |
| June | 27,166 | 3,941 |
| July | 24,634 | 4,856 |
| August | 23,281 | 4,409 |
| September | 20,125 | 4,596 |
| October | 18,246 | 2,926 |
| November | 12,917 | 2,258 |
| December | 10,580 | 2,212 |
| Total Annual | 230,727 | 43,770 |
| Total Combined Annual | **274,497** | |
| Annual Capacity Factor | 31.3% | |

# EXHIBIT M

(to Power Purchase Agreement)

## PPA FUNCTIONAL MAPPING

The Project's NERC verified PPA Generator Owner, PPA Generator Operator and Scheduling Coordinator Contact functional mapping requirements information is as follows:

| | Entity Name | Point of Contact | E-mail | Phone |
|---|---|---|---|---|
| Generator Owner (GO) | | | | |
| Generator Operator (GOP) | | | | |
| Scheduling Coordinator Contact (SCC) | | | | |

**EXHIBIT N**
(to Power Purchase Agreement)

**INTERCONNECTION METERING STANDARD**

*Parties will work to develop metering configuration and procedure to account for multiple interconnection agreements that share one generation tie line.*

**EXHIBIT O**
(to Power Purchase Agreement)

**COMMISSIONING AND TESTING PROCESS**

Section 1. **Purpose.**

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the PPA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the PPA and complete all testing as defined in Exhibit F of the PPA.

Any delays by Buyer (including Buyer's Contract Manager, Power Operations staff and Generation Engineering staff) to timely review submissions of information and requests for approval with respect to the commissioning and testing process as outlined herein ("**Buyer Commissioning Delays**") shall result in day-for-day extensions of the Expected Commercial Operation Date pursuant to Section 3.6 of the PPA.

Figure 1 is for reference purposes only.

Section 2. **Identifying Key Points of Contact.**

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the PPA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

**TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.**

| CONTACT | Company | Group | Address | Project Role | Office Phone | Mobile Phone | E-MAIL |
|---|---|---|---|---|---|---|---|
| (name) | PNM | Generation Engineering | 2401 Aztec Rd NE Albuquerque, NM 87107 | Contract Manager | 505-241-XXXX | 505-241-XXXX | …@pnm.com |

The POC List shall identify, but not be limited to, the following:

**Buyer Team:** Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting,

defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.
- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.
- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.
- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect ("**PCI**") modeling for functionality required for the participating resource schedule coordination ("**PRSC**") (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.
- Power Operations, "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

**Seller Team:** The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- Project Manager – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the generation systems. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.
- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.
- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

- Balancing Area Authority (BAA)
- Transmission Owner (TO)
- Transmission Operator (TOP)
- Generator Owner (GO)
- Generator Operator (GOP)
- Scheduling Coordinator (SC)
- Distribution System Operator (DSO)

Section 3. **Process Overview.**

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

Section 3.1 **Commissioning Kickoff Meeting.**

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

Section 3.2 **Pre-Commissioning.**

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

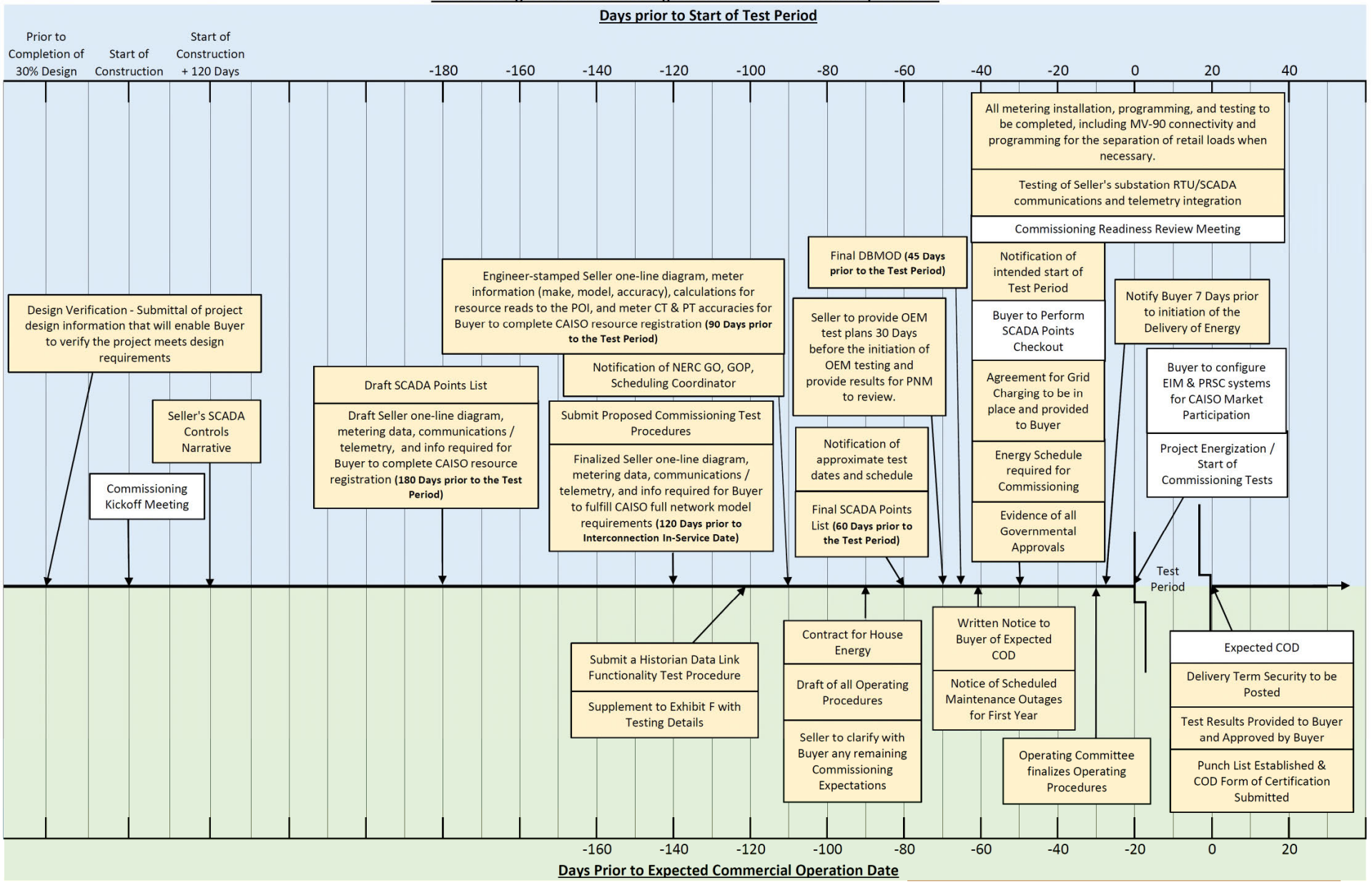
Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1:

## TABLE 2: PRE-COMMISSIONING REQUIREMENTS

| Requirement | Description | Responsible Party | Contributor(s) | Timeline for initial delivery |
|---|---|---|---|---|
| **Design Verification** | Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving PPA obligations, including metering, etc. | **Seller** | Generation Engineering | After completion of IFC design phase of project |
| **Seller's SCADA Controls Narrative** | Controls narrative detailing items related to SCADA and telemetry planning. | **Seller** | PowerOps | 120 Days after Start of Construction |
| | Final DB Mod file delivered to PowerOps. | **Seller** | PowerOps | 10 Days prior to the scheduled Test Period |
| **Seller's Substation Commissioning** | Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled generation resource performance testing. | **Seller** | Buyer's Project Manager | Prior to the scheduled performance testing |
| **Metering** | All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary. | **Seller** | PowerOps | Prior to the scheduled performance testing |
| **CAISO Resource Registration** | Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration. | **Seller** | PowerOps | 180 Days prior to the scheduled Test Period |
| | A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. | **Seller** | PowerOps | 45 Days prior to transmission interconnection in-service date |
| | PNM EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps. | **PowerOps** | Seller | |
| | Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter. | **Seller** | PowerOps | No later than 30 Days prior to the scheduled Test Period |
| **Power Operations Engineering Requirements for Commissioning** (Attachment 1) | This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data. | **PowerOps** | Seller | SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period. |
| **Power Operations & WPM Systems configuration** | EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent generation resources for CAISO market participation. | **PowerOps & WPM IT Support** | Seller | Prior to the beginning of the scheduled Test Period |
| **Operating Procedure** | Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering. | **Seller** | PowerOps | 90 Days prior to the Commercial Operation Date |
| | An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system. | **Seller/Buyer** | Seller / PowerOps / Generation Engineering | 30 Days prior to the Commercial Operation Date |
| **OEM Test Plan** | The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide Buyer with a certificate from an officer certifying that the testing required under the supply agreement with OEM was satisfactorily conducted. | **Seller** | Generation Engineering | All; Seller's officer certification may be included in the certification required by clause (g) of Commercial Operation.. |
| **Test Energy Plan &** | Buyer Testing requirements defined in this document and Exhibit F – Commissioning and | **Seller** | Generation | Seller shall provide its planned energy schedule 30 |

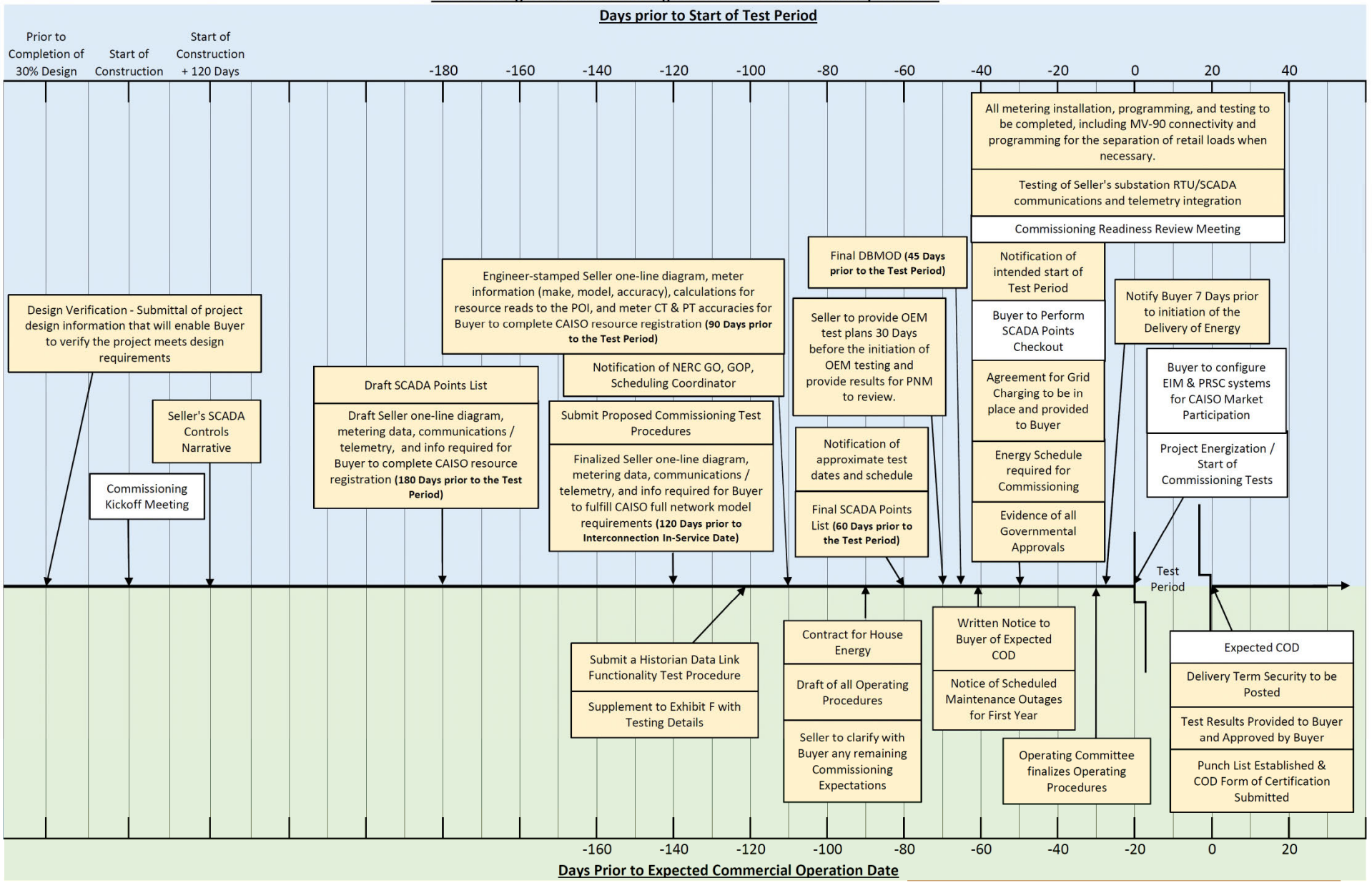
| Requirement | Description | Responsible Party | Contributor(s) | Timeline for initial delivery |
|---|---|---|---|---|
| **Schedule** | Annual Tests of the associated PPA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans. | | Engineering | Days before the beginning of the scheduled Test Period. |
| **Commissioning Readiness Review Meeting** | Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in:<br>Attachment 2: Commissioning Readiness Review | **Generation Engineering** | Seller, PowerOps | 30 Days prior to the beginning of the scheduled Test Period |

**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

Section 3.3 Commissioning.

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the PPA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.
- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Historian Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the PPA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

Section 3.4 **Final Requirements Prior to COD.**

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:

  - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
  - Buyer teams responsible for review and approval of testing results include:
    - SCADA / Telemetry – Power Operations
    - AGC & DERMS – Power Operations
    - Capabilities Tests – Generation Engineering
    - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

## ATTACHMENT 1 TO EXHIBIT O

## BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer prior to the beginning of the Test Period:
    a. Nameplate values: MW, MWh, etc.
    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: Internet and metering based telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry associated with internet and metering communication paths must be independent of one another with no single point of failure.
    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Buyer shall be required to provide a recommended points list 120 Days prior to the beginning of the scheduled Test Period. Seller shall make a final SCADA points list available to Buyer by no later than 30 Days prior to the beginning of the scheduled Test Period.
    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.
    d. Telemetry for Seller's substation awareness shall include:
        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - Generation resource total gross values and total net values (in both MW and MVAr)
                - Gross and net values shall be provided for each resource registered with CAISO
            - Point of Delivery values – MW, MVAr
            - AGC setpoints for generation resource and voltage setpoint. As well as the feedback for those setpoints.
            - Total real power target
    e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. DERMS Workbook inputs:
    a. Seller shall provide required information for the DERMS, including:
        - SCADA keys, resource characteristics, meteorology, etc.
        - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in Exhibit F.

## ATTACHMENT 2 TO EXHIBIT O

## COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. The expected result and how might the test evaluation results affect the program.
5. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
6. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and operational testers prior to any test using personnel.
7. The fallback plan should a technical issue or potential showstopper arise during testing.
    a. The test director that will decide if an issue is a showstopper.
8. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

# EXHIBIT P

## FORM OF LENDER CONSENT

## CONSENT AND AGREEMENT

This Consent and Agreement (this "***Consent***") is made and entered into as of ___ _, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

## RECITALS

_____ ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of a photovoltaic solar electric energy generating facility owned by Seller and located in ____, [STATE] (the "***Solar Project***").

Seller and Buyer have entered into that certain Environmental Attributes Purchase Agreement, dated as of ____ (as amended, restated, supplemented or otherwise modified from time to time, the "***PPA***"), relating to the energy generated by the Solar Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the PPA (the "***Pledged PPA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

## AGREEMENTS

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged PPA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged PPA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of solar energy facilities of comparable size to the Solar Project and the ability perform all aspects of the PPA; (d) has agreed in writing to be bound by the PPA and to assume all of Seller's obligations under the PPA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged PPA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of

and after the date of assignment, the Facility Development Security Amount or the Operational Security, as applicable, and (iii) Buyer has not terminated this PPA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged PPA (a "*Subsequent Seller*"), may be substituted for Seller under the PPA and Buyer shall recognize such Subsequent Seller as its counterparty under the PPA and, subject to all rights and remedies of Buyer under the PPA, continue to perform its obligations under the PPA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the PPA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the PPA. The transfer of the PPA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the ESA, Lender may cure such default by the deadline provided therefor in the ESA. Buyer will not terminate the PPA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the ESA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the PPA, (b) with respect to a default under Section 12.1(B)(8) or 22.21(A), (B), (C) or (E) of the Agreement, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the PPA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the PPA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the ESA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Solar Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. PPA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the PPA; provided that notwithstanding the foregoing, Buyer may terminate the PPA without Lender consent due to an uncured Event of Default under the PPA after the expiration of Lender's rights to cure under Section 4 hereof.

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the PPA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the PPA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as ***Exhibit A*** and the PPA has not been further amended, (v) Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA.

8. Replacement Agreement. If the PPA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the PPA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the PPA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the PPA (other than the bankruptcy of Seller or a transfer of the Solar Project to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 18.6 (Assignment to Lenders) of the PPA).

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining

provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the PPA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the PPA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

**[BUYER]**

By: _____
Name:_____
Title:_____

**[LENDER]**

By _____
Its _____

ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the PPA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the PPA, as and when required under the PPA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the PPA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the PPA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the PPA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the PPA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the PPA. Seller shall have no rights against Buyer, under the PPA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

## EXHIBIT Q

### Form of Estoppel Certificate

### ESTOPPEL CERTIFICATE

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Power Purchase Agreement, dated as of _____ (the "***PPA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a solar energy generating facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the PPA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the PPA have been duly authorized by all necessary action on the part of Buyer, (ii) the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the PPA, Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

[BUYER]

By: _____
Name:_____
Title:_____

Star Light Solar Facility Purchase Power Agreement

# PNM Exhibit GBB-3

Is contained in the following 168 pages.

# POWER PURCHASE AGREEMENT

# STAR LIGHT SOLAR FACILITY

**by and between**

# PUBLIC SERVICE COMPANY OF NEW MEXICO

**and**

**STAR LIGHT ENERGY CENTER, LLC**

**Dated as of June 6, 2025**

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# POWER PURCHASE AGREEMENT—SOLAR FACILITY

This Power Purchase Agreement—Solar Facility, as may be amended from time to time, is entered into this 6th Day of June, 2025 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Star Light Energy Center, LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 700 Universe Blvd, Juno Beach, FL 33408. Buyer and Seller may be referred to in this PPA individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission; and

WHEREAS, Seller desires to develop, design, construct, own and operate a solar energy electric generating facility with an expected total maximum power output of approximately 100 $MW_{AC}$ ("**Project**"), as further defined herein and in Exhibit A; and

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (as amended from time to time, "**Special Service Contract**"), between Buyer and Greater Kudu LLC ("**Retail Customer**"), as amended from time to time, Buyer has agreed, by entering into this PPA, to procure the Energy from the Project to serve Retail Customer's load; and

WHEREAS, Seller desires to generate, sell and deliver to Buyer the Energy generated by the Project and any and all associated or correlative Renewable Energy Certificates and other Environmental Attributes, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this PPA; and

WHEREAS, Buyer and Seller intend to enter into a certain Energy Storage Agreement, pursuant to which some of the Energy shall be exclusively used in Seller's Energy Storage System, and for which Buyer shall purchase the Energy Storage Product,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

## ARTICLE 1
## Definitions and Rules of Interpretation

1.1 Definitions. The following terms have the meanings set forth herein.

"**Abandonment**" means (a) prior to the Commercial Operation Date, a cessation of work and operations at or in respect of the Project for more than one hundred eighty (180) consecutive Days by Seller or Seller's contractors but only if such cessation is not in accordance with Prudent Utility Practices, caused by a Force Majeure Event, caused by a Buyer Event of Default, or is not in accordance with Seller's Project Schedule, or (b) after the Commercial Operation Date, the permanent relinquishment of possession and control of the Project (or any material portion thereof)

by Seller, other than a transfer permitted under this PPA.

"**AC**" means alternating electric current.

"**Accounting Standards**" has the meaning set forth in Section 22.18.

"**Additional Consents**" means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this PPA that are required from any Governmental Authority with respect to the Project.

"**AD/CVD**" means antidumping and/or countervailing duty.

"**Adjustment Cutoff Date**" means (i) for an Eligible Change in Tariff, the beginning of the Test Period, and (ii) for a Section 45(b) Rate Adjustment, the Expected Commercial Operation Date as may be extended under Section 3.6.

"**Affiliate**" of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity, excluding any Tax Equity Investor. For purposes of this definition, the term "control" (including the terms "controls," "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include NEP, NEOP, NEECH, NEER, and NEE, and their respective direct or indirect subsidiaries.

"**After Tax Basis**" means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment ("**Base Payment**") supplemented by a further payment ("**Additional Payment**") to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

"**AGC**" stands for "Automatic Generation Control" and means energy management system equipment that automatically adjusts the generation quantity of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

"**Aggregate Annual Solar Capacity Guarantee Damages Cap**" has the meaning set forth in Section 10.9(E).

"**Ancillary Services**" means operating reserves, frequency regulation, reactive supply, voltage control, frequency response, contingency reserves, and other products associated with electric generation and Energy, each to the extent that the Project is capable of providing such services in its then-current configuration, and all other beneficial outputs of the Project not required for the operation of the Project.

**"Annual Generation Forecast"** means the forecasts of generation from the Project set forth on Exhibit L.

"**Annual Performance Test**" has the meaning set forth in Section 10.8(B).

"**Annual Performance Test Guarantee**" has the meaning set forth in Section 10.9(A).

"**Annual Performance Test Guarantee Damages**" has the meaning set forth in Section 10.9(C).

"**Annual Performance Test Guarantee Ratio**" has the meaning set forth in Section 10.9(A).

"**Annual Performance Test PVSYST Model**" has the meaning set forth in Section 10.8(D)(8).

"**Annual Solar Capacity Guarantee Damages Cap**" has the meaning set forth in Section 10.9(E).

"**Anything of Value**" includes, but is not limited to, cash or a cash equivalent (including "grease," "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

"**Applicable Law**" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, applicable to this PPA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"**Attestation and Bill of Sale**" has the meaning set forth in Section 9.1(C).

"**Back-Up Metering**" has the meaning set forth in Section 5.3(A).

"**Balancing Area**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Balancing Area Authority**" or "**BAA**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

"**Business Day**" means any Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

"**Buyer**" has the meaning set forth in the Preamble, and acts herein in its merchant function capacity.

"**Buyer Costs**" means (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or entering into new arrangements which replace this PPA; and (b) all reasonable attorneys' fees and expenses incurred by Buyer in connection with the termination of this PPA, to the extent such items in (a) and (b) are not already included in Replacement Energy Costs.

"**Buyer-Requested Performance Tests**" has the meaning set forth in Section 10.10.

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement Energy Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value; provided that if (b)(i) is less than (b)(ii), then zero, plus (c) any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs, Environmental Attributes and any Future Environmental Attributes that are currently available pursuant to this PPA as of the date of termination of this PPA, Seller acknowledging that Buyer entered into this PPA for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes and any Future Environmental Attributes; plus (d) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. For termination occurring before the Commercial Operation Date, the Buyer Termination Payment shall not exceed the Development Security, minus any Delay Damages paid.

"**CAISO**" means the California Independent System Operator, or any successor thereto.

"**CAISO EIM**" means the energy imbalance market operated by CAISO, or any successor thereto.

"**Capacity Shortfall Damages**" has the meaning set forth in Section 3.8.

"**Change in Law**" means the occurrence, after the Execution Date, of any of the following: (a) the adoption or taking effect of any law, tax law, rule, regulation, order or treaty; (b) any repeal of or other change in any law, tax law, rule, regulation, order or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"**Change of Control**" means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller; provided, in calculating ownership percentages for all purposes of the foregoing:

(A) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity or voting interests in each such intermediate entity; and

(B) ownership interests in Seller owned directly or indirectly by any Lender (including any Tax Equity Investor) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, a Change of Control will not include any direct or indirect transfer of the interests in Seller to NEP; provided that following such transfer the entity that operates the Project is (or contracts with) a Qualified Operator.

"**Commercial Operation**" means when the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis (in accordance with Prudent Utility Practices) without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) all Seller required permits, required consents and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect, (c) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for the interconnection and delivery of Energy to the Point of Delivery in an amount at least equivalent to the Guaranteed Solar Capacity and is not in material breach of its Interconnection Agreement, (d) Seller has satisfactorily completed all of the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures (e) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement, (f) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this PPA, and (g) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

"**Commercial Operation Date**" means the date, determined in accordance with Section 3.10, on which all of the following have occurred: (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10; (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation Notice**" has the meaning set forth in Section 3.10.

"**Commercial Operation Year**" means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

"**Commissioning Kickoff Meeting**" has the meaning set forth in Section 3.1 of Exhibit O.

"**Commissioning Performance Test**" has the meaning set forth in Section 10.8(A) with such test detailed in Exhibit F and required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

"**Commissioning Readiness Review Meeting**" has the meaning set forth in Exhibit O.

"**Commissioning Tests**" has the meaning set forth in Section 10.2 as further defined in Exhibit F.

"**Compensable Curtailment**" means any curtailment of the Project, except for a Reliability Curtailment, to the extent such curtailment during a Commercial Operation Year has exceeded five percent (5%) of the Annual Generation Forecast for the same Commercial Operation Year.

"**Confidential Information**" has the meaning set forth in Section 22.14(C).

"**Contract Value**" means the sum of the present values of the payments for Solar Energy Output, for each Commercial Operation Year (or portion thereof) in the then-remaining term, (determined without reference to the early termination), which annual amount is equal to (a) the quantity of Metered Output and RECs expected to be produced during such Commercial Operation Year (or portion thereof) *times* (b) the Solar Energy Output Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Counteracting Savings Notice**" has the meaning set forth in Section 3.12(D).

"**Creditworthy**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**CTs**" has the meaning set forth in Section 5.3(A).

"**Data Breach**" has the meaning set forth in Section 22.14(F).

"**Day**" means a calendar day and includes Saturdays, Sundays, and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day

thereafter.

"**DC**" means direct current.

"**Deemed Energy**" has the meaning set forth in Section 4.1(A).

"**Default Rate**" has the meaning set forth in Section 9.4.

"**Defaulting Party**" means the Party with respect to which an Event of Default under Article 12 has occurred.

"**Delay Damages**" has the meaning set forth in Section 3.7.

"**Delayed Capacity**" has the meaning set forth in Section 3.7.

"**Delivery Term**" has the meaning set forth in Section 7.1.

"**Delivery Term Security**" has the meaning set forth in Section 19.1.

"**Development Security**" has the meaning set forth in Section 19.1.

"**Disclosing Party**" has the meaning set forth in Section 22.14(A).

"**Dispute Notice**" has the meaning set forth in Section 13.8.

"**Disputing Party**" has the meaning set forth in Section 9.5(A).

"**Dollars**" means the lawful currency of the United States of America.

"**Downgrade Event**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is not as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Early Termination Date**" has the meaning set forth in Section 12.4.

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission System as set forth in Appendix A of the Interconnection Agreement.

"**Electric Metering Device(s)**" means all metering and data processing equipment used to measure, record, or transmit data relating to the Solar Energy Output generated by the Project. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering including the metering current transformers and the metering voltage transformers.

"**Eligible Change in Tariff**" means any change in Applicable Law, new interpretation of existing Applicable Law or action by a Governmental Authority that (a) imposes on Seller or Seller's Affiliates with respect to the importation of Imported Equipment into the United States any duty (including AD/CVD), tariff, import tax, or other similar import fee or cost that becomes

effective after, or the enforcement of which commences after, the Threshold Date, or (b) increases the applicable rate of any of the foregoing which becomes effective after the Threshold Date, to the extent affecting Imported Equipment.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any Transmission Provider's Transmission System condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller's breach of its Interconnection Agreement with the Transmission Provider.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, generated by the Project and delivered to Buyer at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices, net of auxiliary loads, station electrical uses, and appropriate line losses.

"**Energy Shortfall**" has the meaning set forth in Section 10.9(B).

"**Energy Storage Agreement**" means that certain Energy Storage Agreement between Star Light Energy Center, LLC and Buyer dated as of June 6, 2025.

"**Energy Storage Product**" has the meaning ascribed to the term "Product" in the Energy Storage Agreement.

"**Energy Storage System**" or "**ESS**" has the meaning ascribed to it in the Energy Storage Agreement. The Energy Storage System is being developed concurrently and jointly with the Project and may share certain equipment, buildings, and facilities, including transformers, Interconnection Facilities, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate, with the Project.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include (A) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States Environmental Protection Agency or other governmental agencies, (B) any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the

Clean Air Act, (C) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, (D) credits, benefits or allowances resulting from the compliance of the Project or Project Energy with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "**UNFCCC**") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes include all RECs, any and all aspects of a REC, and the exclusive right to claim the additionality, or "but for cause", of such Projects' development and commercial operation, (E) all WREGIS Certificates as defined by the WREGIS Operating Rules and (F) those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project's generation of electricity. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; (iii) any Energy, reliability, or other power attributes from the Project, (iv) matters designated by Buyer as sources of liability, and (v) any adverse wildlife or environmental impacts.

"**Environmental Contamination**" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this PPA.

"**Event of Default**" means a Seller Event of Default as set forth in Section 12.1 or a Buyer Event of Default as set forth in Section 12.2, each after the passage of applicable notice and cure periods, if any.

"**Excused Delay**" means any of the following: (a) Force Majeure, (b) Interconnection Delay, or (c) an Import Restraint, as provided in Section 3.12, to the extent in each case (i) not caused by an act or omission of Seller, (ii) occurring despite Seller's exercise of Prudent Utility Practices, (iii) not reasonably foreseeable, and (iv) beyond the reasonable control of, and not caused by the negligence or lack of due diligence of, Seller or its contractors or suppliers.

"**Execution Date**" has the meaning set forth in the Preamble.

"**Expected Commercial Operation Date**" has the meaning set forth in Section 3.1.

"**Express Contingency Notice**" has the meaning set forth in Section 3.12.

"**Express Contingency Termination Payment**" means a termination amount equal to (i) one million dollars ($1,000,000) for a termination occurring pursuant to an Express Contingency Notice given on or before August 31, 2025 (regardless of when such termination occurs), or (ii) thirty-seven and one-half percent (37.5%) of the Development Security for a termination occurring pursuant to an Express Contingency Notice given at any other time.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**Fitch**" shall mean Fitch Ratings Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

"**Force Majeure Event**" has the meaning set forth in Section 14.1(A).

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on the Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date.

"**GAAP**" has the meaning set forth in Section 22.18.

"**Government Official**" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

"**Governmental Approval**" means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of renewable energy and Renewable Energy Certificates and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation with regard to any Non-Governmental Compliance Obligations.

"**Governmental Authority**" means any applicable federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"**Governmental Charges**" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority, including local, state or federal regulatory or taxing authorities

that would affect the sale and purchase of Solar Energy Output contemplated by this PPA, either directly or indirectly.

"**Gross Receipts Taxes**" means any New Mexico state and local sales taxes, gross receipts taxes and similar taxes and charges.

"**Guaranteed Solar Capacity**" has the meaning set forth in Section 3.1.

"**Guaranteed Start Date**" has the meaning set forth in Section 3.1.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" has the meaning set forth in Section 1.4.

"**Imported Equipment**" means solar photovoltaic cells, photovoltaic modules, inverters, step-up transformers, and structures (including towers and racking) intended to be imported into the United States from foreign destinations for the Project.

"**Import Restraint**" means any withhold release order or other law, rule, or regulation, including the Uyghur Forced Labor Prevention Act, or any action of a Governmental Authority under any such order, law, rule, or regulation, that imposes additional waiting time for Seller to receive Imported Equipment from foreign destinations, or prevents or delays the import or release of any Imported Equipment into the United States.

"**Installed Solar Capacity**" means, as of a given point in time, the aggregate nameplate capacity of all Solar Units installed and commissioned at the Project.

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended from time to time.

**"Interconnection Delay"** means the Transmission Provider's delay of the In-Service Date (as defined in the Interconnection Agreement) beyond the schedule set forth in the Interconnection Agreement in completing construction of the Interconnection Facilities or upgrades to the

Transmission Provider's Transmission System related to, and required pursuant to the Interconnection Agreement for, the interconnection of the Project, but only to the extent that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, including Seller's failure to complete its obligations under the Interconnection Agreement as needed to ensure timely completion and operation of such Interconnection Facilities.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities as defined and set forth in the Interconnection Agreement.

"**Internal Revenue Code**" means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

"**Issuer Minimum Requirements**" has the meaning set forth in Section 19.2.

"**ITC(s)**" means the investment tax credits established pursuant to Section 48 or Section 48E of the Internal Revenue Code, as such law may be amended or superseded (in whole or in part) from time to time, measured in Dollars.

"**kW**" means one or more kilowatts AC of electricity, as the context requires.

"**kWh**" means kilowatt hour AC.

"**Lender(s)**" means any and all Persons other than an Affiliate of Seller: (a) lending money or extending credit (including any financing lease, monetization of tax benefits, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or to an Affiliate of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) for any capital improvement or replacement related to the Project; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

"**Letter of Credit**" means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

"**Licensed Professional Engineer**" means an independent, professional engineer that is reasonably acceptable to Buyer, licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

"**Local Provider**" has the meaning set forth in Section 1.4.

"**Losses**" has the meaning set forth in Section 20.1(A).

"**Market Event**" has the meaning set forth in Section 22.22.

"**Market Operator**" means (a) CAISO in its capacity as operator of EIM, (b) the operator of the BAA or any other entity performing the market operator function for the BAA, or (c) the operator of any organized day-ahead or intra-hour market for a region that includes the Transmission Provider's Transmission System.

"**Metered Output**" means the Energy made available from the Project at the Point of Delivery, as measured by the Electric Metering Devices and adjusted for any losses, based on methodology formulated in accordance with Prudent Utility Practices and approved by PNM in its commercially reasonable discretion, between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Model Rated Power**" has the meaning set forth in Section 10.8(D)(6).

"**Month**" means a calendar month.

"**Monthly Billing Period**" means the period during any particular Month in which Solar Energy Output has been generated by Seller for Buyer and delivered to the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.12.

"**Moody's**" means Moody's Investor Services, Inc. and any successor thereto.

"**Mountain Standard Time**" or "**MST**" means the time that is seven (7) hours behind Coordinated Universal Time (UTC).

"**MPT Failure**" means any failure in the Project's main power transformer or high voltage breakers (a) requiring (x) at least a thirty (30) day outage, and (y) any of (i) replacement of the main power transformer or high voltage breakers, (ii) shipment of the main power transformer or major component thereof, or high voltage breakers or major component thereof, to the manufacturer for repair, or (iii) the on-site repair of the main power transformer or major component thereof, or high voltage breakers or major component thereof, and (b) that is not caused directly or indirectly by Seller's failure to comply with Prudent Utility Practices or Applicable Law or otherwise by the dalliance, delay, lack of prudently maintained spare parts, fault or negligence of or by Seller.

"**Munitions List**" means any list of articles, services or technology designated as defense or military articles, technologies, software or services by any relevant Government Authority, including items listed on the United States Munitions List and/or the Common Military List of the European Union.

"**MW**" means megawatt or one thousand (1,000) kW AC.

"**MWh**" means megawatt hours AC.

"**NEE**" means NextEra Energy, Inc., a Delaware corporation.

"**NEECH**" means NextEra Energy Capital Holdings, Inc., a Delaware corporation.

"**NEER**" means NextEra Energy Resources, LLC, a Delaware limited liability company.

"**NEOP**" means XPLR Infrastructure Operating Partners, LP (f/k/a NextEra Energy Operating Partners, LP), a Delaware limited partnership.

"**NEP**" means XPLR Infrastructure, LP (f/k/a NextEra Energy Partners, LP), a Delaware limited partnership.

"**NERC**" means the North American Electric Reliability Corporation or any successor organization.

"**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in Section 17.3(B).

"**Non-Defaulting Party**" means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

"**Non-Governmental Compliance Obligations**" means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, and self-regulatory organizations to which the Party is required to have membership and/or submit to jurisdiction in the performance of this PPA.

"**O&M Records**" has the meaning set forth in Section 13.4(A).

"**OATT**" means Open Access Transmission Tariff.

"**Operating Parameters**" has the meaning set forth in Section 10.4(A).

"**Operating Procedures**" means those procedures developed pursuant to Section 10.5.

"**Operating Records**" means all operating logs, blueprints for construction, operating manuals, all warranties on equipment, material engineering drawings, environmental permits, plans, and all documents, including but not limited to supply contracts, studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project. Seller may redact from Operating Records information that Seller reasonably deems commercially sensitive, so long as such redaction does not result in a non-performance by Seller of any of its obligations under this PPA, including audits under Section 22.18 or required to verify Seller's compliance with this PPA and its representations and warranties in Section 15.1, Guaranteed Solar Availability Percentage, and billing and payments.

"**Outage Notice**" has the meaning set forth in Section 7.5(A).

"**Party**" or "**Parties**" has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

"**Performance Test Ratio**" has the meaning set forth in Section 10.8(D)(4).

"**Performance Test Report**" has the meaning set forth in Section 10.8(G).

"**Performance Tests**" has the meaning set forth in Section 10.8.

"**Person**" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**Point of Contact List**" or "**POC List**" has the meaning set forth in Section 2 of Exhibit O.

"**Point of Delivery**" means the electric system point at which Seller makes available to Buyer and delivers to Buyer or accounts for the Solar Energy Output being provided by Seller to Buyer under this PPA. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this PPA. Energy delivered from the Project to the Energy Storage System shall be adjusted for losses to the Point of Delivery and shall be deemed to have been delivered at the Point of Delivery.

"**PPA**" or "**Power Purchase Agreement**" means this Power Purchase Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"**Primary Metering Device(s)**" means the Electric Metering Device used as the primary basis to measure, record, or transmit data relating to the Metered Output associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

"**Project**" means Seller's solar energy generation facility with a nameplate capacity of 100 MW at the Point of Delivery located in Valencia County, New Mexico which will produce the Solar Energy Output made available to Buyer under this PPA, including one or more of Seller's Solar Units and Seller's Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this PPA, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this PPA.

"**Project Manager**" has the meaning set forth in Section 10.1(D).

"**Project Schedule**" has the meaning set forth in Section 3.2.

"**Projected Schedule**" has the meaning set forth in Section 7.4(A).

"**Promotional Materials**" has the meaning set forth in Section 22.15.

"**Prudent Utility Practice(s)**" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available when needed and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating requirements of the Interconnection Agreement, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for solar power generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

"**PTC(s)**" means the production tax credits established pursuant to Section 45 or Section 45Y of the Internal Revenue Code, as such law may be amended or superseded (in whole or in part) from time to time, measured in Dollars.

"**PTs**" has the meaning set forth in Section 5.3(A).

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating at least three hundred (300) MW of solar generation and that is trained on the functionality and operation of the solar generation technology, or (b) any other Person reasonably acceptable to Buyer.

"**RC**" has the meaning set forth in Section 10.8(D)(1).

"**Receiving Party**" has the meaning set forth in Section 22.14(A).

"**Receiving Party's Representatives**" has the meaning set forth in Section 22.14(B).

"**Recording**" has the meaning set forth in Section 22.19.

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Reliability Curtailment**" means any curtailment of the Project (a) that is ordered by the Market Operator, BAA or Transmission Provider, (b) by Seller for an Emergency Condition or safety or equipment failure situations, or (c) except that it shall also be a Reliability Curtailment for an oversupply position only where resources are contributing to an excess position of 50 MW or more in relation to PNM's jurisdictional utility load and the Market Operator cannot either manage such oversupply through market operations or export such oversupply due to NERC generation control performance standards (including BAL-001-2), which curtailment shall be done in an equitable and non-discriminatory manner and consider available energy storage resources associated with Retail Customer. Buyer will, upon reasonable notice, provide Seller reasonable documentation relating to any curtailment Buyer considers Reliability Curtailment.

"**Renewable Energy Certificate**" or "**REC**" means a WREGIS Certificate and all Environmental Attributes associated with the generated energy. Seller must deliver RECs that are compliant with the requirements of the New Mexico Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended.

"**Replacement Energy Costs**" means the costs to Buyer reasonable and necessary to replace Solar Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein and based upon similar terms, conditions and performance standards outlined in this PPA) which Seller, in accordance with this PPA, was obligated to deliver to Buyer but failed to. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs) and Ancillary Services delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Solar Energy

Output to the Point of Delivery and any associated transmission costs, (b) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (c) Buyer's expenses, including reasonable attorneys' fees, suffered as a result of Seller's failure to perform under this PPA.

**"Report Review Period"** means a period ending fifteen Business Days following delivery by the Technical Expert of its final report.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**Retail Customer"** has the meaning set forth in the Recitals.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community, or His Majesty's Treasury.

"**Scheduled Maintenance Outage**" means a time during which a Solar Unit is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" or "**SCC**" has the meaning set forth in Section 3.9.

"**Scope Reporting Rule**" means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 C.F.R. § 229.1500, et seq., as amended from time to time, and, to the extent Buyer or Retail Customer voluntarily elects in its sole discretion to comply therewith, as proposed, or, following the effectiveness thereof, in the final rule form thereof despite being stayed or vacated by appealable judicial action and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Subscriber voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

"**SEC**" has the meaning set forth in Section 22.18.

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Section 45(b) Rate Adjustment**" means any Change in Law that repeals, in whole or in part, the Inflation Reduction Act of 2022, or changes any regulations or administrative guidance

implementing the Inflation Reduction Act, in a manner that prevents or limits Seller from claiming or monetizing any PTC.

"**Security**" means Development Security or Delivery Term Security, as applicable.

"**Seller**" has the meaning set forth in the Preamble.

"**Seller Excused Hours**" means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Scheduled Maintenance Outage, (b) a curtailment of the Project, (c) a Force Majeure Event, or (d) any failure by Buyer to receive Energy at the Point of Delivery.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Project to the Point of Delivery not associated with Seller Excused Hours.

"**Seller Guarantor**" means (i) NEECH, or (ii) a Creditworthy entity that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Parties**" means the following persons or entities connected to the Seller providing services in connection with this Agreement: Affiliates, all entities that it owns or controls, and all of Seller's owners (including Seller's Parent Entity), directors, officers, employees, representatives, and agents.

"**Seller Permitted Transfer**" means:

(1) during periods when NEER or its Affiliate is the direct or indirect owner of more than fifty percent (50%) of the direct or indirect equity and voting interests of Seller (which are not otherwise held by Tax Equity Investors in connection with a Tax Equity Financing), any of the following: (a) a Change of Control of Seller's Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor in connection with a Tax Equity Financing; or (c) a transfer of (i) all or substantially all of the assets of NEER or Seller's Ultimate Parent in a single transaction, (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction, or (iii) all or substantially all of NEER's or Seller's Ultimate Parent's solar generation portfolio in a single transaction; *provided* that following such transfer (A) the entity operating the Project is (or contracts with) a Qualified Operator to operate the Project; (B) such transfer does not have a material adverse effect on the Seller's credit characteristics; and (C) the transferee maintains the applicable Seller Security in accordance with Article 19, and

(2) during periods when NEER or its Affiliate is not the direct or indirect owner of more than fifty percent (50%) of the direct or indirect equity or voting interests of Seller (which are not otherwise held by Tax Equity Investors in connection with a Tax Equity Financing) any of the following: (a) a Change of Control of Seller's Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor in connection with a Tax Equity Financing; or (c) a transfer of all or substantially all of Seller's Ultimate Parent's renewable energy

generation portfolio in a single transaction; provided, that in the case of each of (b) or (c), following such transfer (A) the entity that operates the Project is (or contracts with) a Qualified Operator, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics, and Seller, or such Person, maintains the applicable Seller Security requirements in accordance with Article 19.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the Solar Energy Output for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; provided that if (a)(i) is less than (a)(ii), then zero, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or in entering into new arrangements which replace this PPA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this PPA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this PPA.

"**Serial Defect**" means a defect occurring in ten percent (10%) or more of the same parts or components of the Project, that is not attributable to normal wear and tear or reasonably expected lifecycle degradation.

"**Shortfall Factor**" has the meaning set forth in Section 10.9(B).

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this PPA. This PPA is Site specific, and any relocation of the physical location of the proposed Site

(other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. Adding or subtracting contiguous parcels of property will not be deemed a relocation requiring Buyer consent.

"**Solar Energy Output**" means Metered Output, Environmental Attributes (including, but not limited to RECs) and Ancillary Services generated by the Project.

"**Solar Energy Output Payment Rate**" means the price to be paid by Buyer to Seller for the Solar Energy Output, as set forth in Section 3.1.

"**Solar Period Hours**" has the meaning set forth in Exhibit H.

"**Solar Unit(s)**" means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with a single inverter.

"**Special Service Contract**" has the meaning set forth in the Recitals.

"**Supplemental Tax Incentives**" means any federal, state, or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any. Supplemental Tax Incentives do not and shall not include any benefits available under the Inflation Reduction Act of 2022 or any regulations promulgated thereunder, which are included in the Solar Energy Output Payment Rate.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of generating units, including the Solar Units.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits, Supplemental Tax Incentives, and any other tax credits which are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon

net income or net worth as set forth in more detail in Section 9.7.

"**Technical Expert**" means, (i) with respect to an Import Restraint, an independent third-party validation firm that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, or (4) Clean Energy Associates; or (B) mutually agreed upon by both Parties; (ii) with respect to a Counteracting Savings Notice or Express Contingency Notice, an independent third-party validation firm that is: (A) selected by Buyer if a Counteracting Savings Notice, or Seller if a Express Contingency Notice from among (1) Pricewaterhouse Coopers, (2) KPMG, or (3) Ernst & Young; or (B) mutually agreed upon by both Parties.

"**Term**" means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Energy**" means any and all Solar Energy Output generated by the Project and delivered to Buyer during the Test Period.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date.

"**Test Rated Power**" has the meaning set forth in Section 10.8(D)(5).

"**Threshold Date**" means (i) for an Eligible Change in Tariff, March 31, 2025, and (ii) for a Section 45(b) Rate Adjustment, the Execution Date.

"**Transmission Provider**" means Public Service Company of New Mexico, Inc., a New Mexico corporation, acting in its transmission function capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means (i) NEE, or, (ii) after any transfer of the direct or indirect equity interests in Seller to NEP, NEE or NEP.

"**Weather Stations**" has the meaning set forth in Section 10.11(A).

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

"**WREGIS Qualified Reporting Entity**" as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS Certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules and WREGIS Terms of Use.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this PPA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this PPA; provided, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this PPA, the terms of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this PPA as a whole.

(H) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(I) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or".

(J) Headings and Section titles are solely for convenience and should not be used to aid in the construction of this PPA.

(K) All uses of the word "shall" in this PPA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions and therefore:

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this PPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

(D) Notwithstanding the foregoing, nothing in this PPA shall be construed to limit Seller's rights, claims, causes of action or similar legal abilities against the Transmission Provider, BAA or Market Operator for actions those parties may take from time to time, nor shall this PPA be construed to limit the liability of the Transmission Provider, BAA or Market Operator with respect to Seller.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose ("**House Energy**"). Seller shall secure a contract with the local utility in whose retail service territory the Project is located ("Local Provider") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter Energy generated and delivered by the Project in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project

from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this PPA are not binding upon the Local Provider. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this PPA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and for House Energy, backfeed power, and station service power or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy, backfeed power, and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

## ARTICLE 2
## Term and Termination

2.1 Execution Date and Term. This PPA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth ($20^{th}$) Commercial Operation Year ("**Term**"), subject to the early termination provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The Term shall be unaffected by termination of the Special Services Contract.

## ARTICLE 3
## Project Description

3.1 Commercial Terms. The following commercial terms, as more fully set forth in this PPA, apply to the transaction contemplated by this PPA:

### COMMERCIAL TERMS

| | |
|---|---|
| **Buyer:** Public Service Company of New Mexico | **Seller**: Star Light Energy Center, LLC |
| **Project**: Star Light Solar | |
| **Point of Delivery:** The point within WECC Path 48 where Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided under this PPA, as further | |

| | |
|---|---|
| specified in the definition of "Point of Delivery". | |
| **Contract Term**: Twenty (20) Commercial Operation Years | **Guaranteed Solar Capacity (MWs):** 100 $MW_{AC}$ |
| **Product Type:** Bundled Energy, Ancillary Services, RECs, and Environmental Attributes | **Solar Energy Output Payment Rate:** $35.87/MWh |
| **Day(s) of week:** Monday through Sunday, including NERC holidays | **Hours:** Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time ("**MST**") |
| **Guaranteed Start Date:** One Hundred Eighty (180) Days after the Expected Commercial Operation Date | |
| **Expected Commercial Operation Date:** December 1, 2026, subject to extension as set forth in Section 3.6. | |

3.2 Project.

(A) Exhibit A provides a detailed description and implementation schedule of the Project ("**Project Schedule**"), including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

(B) Exhibit L identifies the expected first year total annual Energy to be delivered from the Project to the Point of Delivery and the corresponding capacity factor. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Solar Units and Energy Storage System at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units, Interconnection Facilities, and Energy Storage System at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practice(s), the terms of this PPA and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Sections 3.4.A through Section 3.4.H, and Seller shall ensure that the Project meets or exceeds the standards defined in IEEE Standard 2800-2022

Sections 4.3 through Section 4.9 at the Point of Delivery (to the extent that Project equipment capable of meeting such standard is commonly and reasonably available for procurement and installation in the Project), at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N – Interconnection Metering Diagram from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) be capable of both full load and idle operation over an ambient temperature range of -20$^{o}$F to 110$^{o}$F with the full range of relative humidity.

(F) deliver Energy to Buyer, at the frequency specified by Buyer;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of disconnection remotely by the System Control Center; and

(I) The Project shall meet or exceed the recommended performance specifications of this Section 3.4.I through Section 3.4.K, and as appropriately defined in IEEE Standard 2800-2022 Sections 5, Section 6 and Section 7 at the Point of Delivery (to the extent that Project equipment capable of meeting such standard is commonly and reasonably available for procurement and installation in the Project), at all times:

(J) [Reserved]

(K) [Reserved]

(L) The Project meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery (to the extent that Project equipment capable of meeting such standard is commonly and reasonably available for procurement and installation in the Project); and

(M) No later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or

equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the Project. These controls shall include the following MESA-ESS modes or equivalent: (i) Automatic Generation Control and (ii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Sections 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this PPA, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis, up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Excused Delay that delays construction or commencement of operation of the Project. Seller shall give written notice to Buyer describing any such Excused Delay within five (5) Business Days after becoming aware of its effect on Seller's performance under this PPA. This notice shall provide such detail concerning the Excused Delay as Seller reasonably possesses at the time. The number of Days of such extension shall be calculated from the date on which the Excused Delay begins. If cumulative extensions for Excused Delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this PPA without liability of either Party other than obligations already incurred; *provided*, however, that if cumulative extensions for Excused Delay have delayed the Commercial Operation Date for three hundred sixty-five (365) Days and Buyer has not terminated the PPA, then Seller will have the right to terminate this PPA without liability of either Party other than obligations already incurred. If the Expected Commercial Operation Date has been extended more than one hundred (100) Days due to an Import Restraint, and either Party terminates the PPA in accordance with the foregoing sentence, Seller shall pay to Buyer the Express Contingency Termination Payment, and Buyer shall retain any unpaid Express Contingency Termination Payment from the Development Security.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of

Delayed Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity as of the determination date. If the Commercial Operation Date has not occurred before the earlier of (i) the Guaranteed Start Date or (ii) the date on which the accrued Delay Damages equal the Development Security, then Seller shall thereafter have the right for thirty (30) days to terminate this PPA immediately by providing written notice thereof to Buyer, and, other than Seller's payment of the accrued Delay Damages in the amount of the Development Security, no Buyer Termination Payment shall be due.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity of the Project has been constructed, commissioned, and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Solar Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date (as such date may be extended by the extension of the Expected Commercial Operation Date pursuant to Section 3.6), then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars ($350,000) per MW of Delayed Capacity ("**Capacity Shortfall Damages**"), in which case the Guaranteed Solar Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Energy.

(A) Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generation Operator and will designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M, forty-five (45) Days prior to the beginning of the Test Period. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Test Energy as reasonably required for purposes of testing and commissioning the Project. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to the initial delivery of Test Energy to Buyer.

(B) Seller shall retain Public Service Company of New Mexico as its WREGIS Qualified Reporting Entity to report to WREGIS under the WREGIS Operating Rules, unless agreed to otherwise by Buyer and Retail Customer. Seller shall document and provide information required for the Qualified Reporting Entity to record RECs with WREGIS for the Test Energy generated prior to the Commercial Operation Date, including but not limited to production data and REC vintage. To the extent that Seller does not provide the necessary information or WREGIS does not provide WREGIS Certificates for the Test Energy, Seller shall (a) provide the RECs for a quantity of Energy equivalent to the quantity of such Test Energy or (b) reimburse Buyer for Buyer's costs to replace RECs for a quantity of Energy equivalent to the quantity of such Test Energy.

3.10 Notice of Commercial Operation. Not less than thirty (30) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such anticipated Commercial Operation Date; provided that such anticipated Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied (the "**Commercial Operation Notice**"). Buyer shall, within fifteen (15) Business Days, in writing either accept Seller's Commercial Operation Notice or reject it based on specifically-identified deficiencies in the criteria in the definition of Commercial Operation Date, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent Commercial Operation Notice is submitted to Buyer. If Buyer rejects the Commercial Operation Notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof utilized in the Project under this PPA is not prohibited by Applicable Law. To the fullest extent permitted by law, Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.12 Eligible Change in Tariff; Import Restraint.

(A) Seller acknowledges that this Section 3.12 is intended for sole use in connection with Retail Customer service under Schedule 36-B and is not precedential for any other contract or agreement with PNM, with Seller or with any other Person. To the extent either (X) one or more Eligible Change in Tariffs or a Section 45(b) Rate Adjustment occur between the Threshold Date and the Adjustment Cutoff Date that Seller is able to document will increase Seller's costs reasonably anticipated over the Term to perform this PPA, or reduce the value (including any limitation on Seller's ability to transfer or otherwise monetize) of any tax credits available under Section 45 or Section 45Y of the Internal Revenue Code and/or quantity thereof that Seller reasonably anticipated receiving, by an amount that is equal to at least one and one half percent (1.5%) of either the costs for Seller to build the Facility or the value of the Section 45 or Section 45Y tax credits, as applicable, Seller anticipated on the Threshold Date, or (Y) one or more Import Restraints occur between the Execution Date and the Adjustment Cutoff Date that will delay the Expected Commercial Operation Date, Seller may prior to thirty (30) Days after each such Eligible Change in Tariff, Section 45(b) Rate Adjustment, or Import Restraint provide written notice to Buyer of an increase to the Solar Energy Output Payment Rate to keep Seller whole with respect to the cost increases in the case of an Eligible Change in Tariff or Section 45(b) Rate

Adjustment, or delays that Seller reasonably anticipates in the case of an Import Restraint, including replacement supply arrangements and the required extension of the Expected Commercial Operation Date, Guaranteed Start Date, and all other Milestones (in each case, an "**Express Contingency Notice**").

(B) If Buyer disagrees with any aspect of an Express Contingency Notice, Seller shall at its expense retain the Technical Expert. Within fifteen (15) Business Days of Buyer's receipt of the Express Contingency Notice, Buyer and Retail Customer may submit a report to the Technical Expert setting forth questions, countervailing considerations, and other relevant matter, and thereafter the Technical Expert will generate a report respecting the matters set forth in the Express Contingency Notice, including whether it agrees with the cost increases in the case of an Eligible Change in Tariff or a Section 45(b) Rate Adjustment or schedule changes in the case of an Import Restraint, evidencing the facts alleged by Seller. Such report shall preserve the confidentiality of the information provided by the Parties. Buyer shall have the Report Review Period to review the report from the Technical Expert. Seller shall bear the expenses of the Technical Expert. The Technical Expert's final written determinations shall be binding on the Parties and not subject to dispute.

(C) The PPA shall be automatically amended on the first day following the Report Review Period to incorporate any increase to the Solar Energy Output Payment Rate or extension to the Expected Commercial Operation Date, Guaranteed Start Date, or other Milestones as set forth in the Express Contingency Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable, except that unless Buyer agrees otherwise in writing: (1) any increase to the Solar Energy Output Payment Rate pursuant to Section 3.12(A)(X) shall not exceed $3/MWh, and (2) any extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other Milestone pursuant to Section 3.12(A)(Y) shall not exceed one hundred and eighty (180) days; and provided further, that if Seller's Express Contingency Notice sets forth for implementation an increase to the Solar Energy Output Payment Rate that exceeds the increase limitation in clause (1) or extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other Milestone that exceeds the extension limitations in clauses (2) above, and Buyer does not accept such excess increase or extension in writing, Seller shall have the right to terminate this PPA and pay to Buyer the Express Contingency Termination Payment, but without further liability of either Buyer or Seller for such termination, upon notice to Buyer, unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security less any unpaid Express Contingency Termination Payment to Seller within fifteen (15) days after such termination.

(D) Counteracting Savings Price Adjustment. If a Change in Law occurs, after the Threshold Date and before the first anniversary of the last adjustment to price or schedule following an Express Contingency Notice that creates savings for Seller, economic benefits for Seller, decreases costs of performance or offsets prior increases in costs to performance set forth in a previous Express Contingency Notice, Buyer may, within ninety (90) days after such Change in Law, provide written notice to Seller of a decrease to the Solar Energy Output Payment Rate (a "**Counteracting Savings Notice**"). The Parties shall use the process provided in Section 3.12(B) as if the Counteracting Savings Notice was an Express Contingency Notice for an Eligible Change in Tariff, but providing for a reduction in the Solar Energy Output Payment Rate and for Buyer to at its expense retain the Technical Expert, and Seller will have the Report Review Period to review

the report of the Technical Expert. The PPA shall be automatically amended on the first day following the Report Review Period to incorporate any decrease to the Solar Energy Output Payment Rate as set forth in the Counteracting Savings Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable; provided that, unless Seller agrees otherwise in writing, any decrease to the Solar Energy Output Payment Rate under this Section 3.12(D) shall not exceed the cumulative previous increases to the Solar Energy Output Payment Rate pursuant to all prior Seller Express Contingency Notices.

## ARTICLE 4
## AGC; Curtailment

4.1 AGC; Curtailment. Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term capable of controlling each inverter. Beginning on the Commercial Operation Date and in response to directives from the System Control Center, Seller shall curtail the Project by use of the AGC system to curtail the Project as directed. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction.

(A) The Project shall be curtailable by use of the AGC system. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations. "**Deemed Energy**" means the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Compensable Curtailment, determined as follows: Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account weather and pyranometer data from the meteorological station(s), via a mutually agreed upon method, at the Site for all or a portion of the Solar Units taken out of service due to the Compensable Curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller's calculations of Deemed Energy.

(B) Seller shall reduce Solar Energy Output from the Project during and to the extent of any curtailment.

## ARTICLE 5
## Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to the Point

of Delivery, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Seller shall be responsible for the costs of interconnection and costs required to deliver the Energy from the Project to Buyer at the Point of Delivery at the required voltage, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to the Project's output up to the Point of Delivery.

(B) Dispatch Priority.

(1) The Parties acknowledge and agree that the Interconnection Agreement establishes a maximum injection capacity and that such capacity shall be a limit on, and jointly used by, the Project and the ESS.

(2) The Parties therefore agree that the delivery of Energy shall take priority over energy discharged from the ESS, *except* that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, energy discharged from the ESS shall take priority over delivery of Energy.

(C) On a Day-ahead basis, and no later than 4:00 a.m. MST, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer. Each Friday, and no later than 12:00 noon MST, Seller shall provide Buyer a non-binding weekly Project generation forecast for the following week based on equipment availability. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond.

(E) Seller shall provide to Buyer a finalized one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to provide this information to Buyer in a timely manner.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the

same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers ("**CTs**") and potential transformers ("**PTs**") ("**Back-Up Metering**") are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery. The design of the Electric Metering Device system shall be subject to Buyer approval, not to be unreasonably withheld, prior to commencement of construction of the Project. Electric Metering Devices shall be capable of measuring and reading instantaneous, five minute, fifteen minute and hourly real and reactive Energy and capacity. Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe following such test. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.2 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however,* that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however,* that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety

standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Secondary Metering, fails to register, or if the measurement made by an Electric Metering Device, or Secondary Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, followed by Secondary Metering, to determine the amount of such inaccuracy, provided, however, that Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If Secondary Metering is installed on the low side of Seller's step-up transformer, the Secondary Metering data shall be adjusted for losses in the same manner as for the Primary Metering Device. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment

of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

## ARTICLE 6
## Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this PPA are subject to satisfaction of the following condition precedent: As provided in Section 17.3, receipt of NMPRC Approval.

6.2 Notice. As soon as reasonably practicable after satisfaction of the condition precedent specified in Section 6.1 or after confirmation that NMPRC Approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

## ARTICLE 7
## Sale and Purchase of Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Solar Energy Output delivered or deemed delivered by Seller at the Point of Delivery in accordance with Article 5; *provided, however,* that, subject to Section 8.1(A), Buyer shall not be required to receive and purchase Energy from the Project when and to the extent that (a) a Party's performance is excused by a Force Majeure Event, (b) a curtailment is continuing, (c) a Seller Forced Outage is continuing, or (d) a Scheduled Maintenance Outage is continuing. Furthermore, and without limiting Section 10.7, Buyer shall not be required to receive or purchase Solar Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Solar Capacity, as adjusted for losses to the Point of Delivery.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Energy from the Project up to delivery and receipt at the Point of Delivery and Buyer shall be deemed to be in control of such Energy from the Project from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy from the Project shall transfer from Seller to Buyer at the Point of Delivery. Title related to any Environmental Attributes and Future Environmental Attributes shall transfer from Seller to Buyer upon generating of the Energy from the Project.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such Future Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any Future Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this PPA, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and

following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; provided that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements and any other applicable guidelines. Buyer shall control scheduling of Metered Output. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Solar Energy Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall provide Buyer with a good faith estimate of the hourly quantities of Solar Energy Output that Seller expects to generate in the following Commercial Operation Year ("**Projected Schedule**"). Seller shall also provide estimates of the daily quantity of Energy to be delivered to Buyer. Seller shall configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than ten (10) MW per minute. PNM is not required to provide this Project as a participating resource in a regional market.

(B) [RESERVED].

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Solar Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly quantities of Solar Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Seller Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage in the amount of at least five percent (5%) of the Guaranteed Solar Capacity. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage (i) in the amount of at least five percent (5%) of the Guaranteed Solar Capacity, and (ii) not available to Buyer through the SCADA System. Seller, through its Scheduling

Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

7.6 Availability Guarantee. Seller guarantees that the Project shall be available to produce Solar Energy Output and shall pay Solar Availability Damages, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

## ARTICLE 8
## Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Solar Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Solar Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to: (a) the product of (i) the aggregate amount of (x) Solar Energy Output (MWh) delivered to Buyer at the Point of Delivery, and (y) Deemed Energy, *multiplied by* (ii) the Solar Energy Output Payment Rate, *plus* (b) the product of (i) Deemed Energy, *multiplied by* (ii) the value, on an After Tax Basis, of all Tax Benefits (including without limitation PTCs) that would have been attributable to such Deemed Energy. The Solar Energy Output Payment Rate also is the sole payment from Buyer to Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Solar Energy Output Payment Rate includes all Taxes. Buyer shall not be required to pay Seller for any Energy curtailed during any Reliability Curtailment.

(B) If Supplemental Tax Incentives become available in connection with the Solar Energy Output, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this PPA. At Buyer's option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this PPA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such incentives.

(C) In the event that Seller or an Affiliate of Seller realizes any Supplemental Tax Incentives with respect to the Project, the value of such Supplemental Tax Incentives actually realized will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental Tax Incentives by Seller or Affiliate of Seller, Seller will remit to Buyer a payment equal to fifty percent (50%) of the value of such Supplemental Tax Incentives.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this PPA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental Tax Incentives are applicable to the time period before the repudiation, termination, or expiration of this PPA.

## ARTICLE 9
## Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail, including an Attestation and Bill of Sale verifying the associated RECs and Environmental Attributes, if applicable, in the form of Exhibit G-2 ("**Attestation and Bill of Sale**").

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this PPA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this PPA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been

complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this PPA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Gross Receipts Tax is applicable to the sale or delivery of Solar Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Solar Energy Output and on Buyer's payment and Seller's receipt of amounts due under this PPA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Solar Energy Output to Buyer pursuant to this PPA.

(B) Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this PPA and implement the provisions in this PPA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this PPA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this PPA, including Section 9.9 below, all payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this PPA, including damages and other payments that are owed by a party to the other Party pursuant to this PPA. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this PPA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this PPA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 10
## Operations and Maintenance

10.1 Construction of the Project. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits (except to the extent otherwise provided in Section 3.12) or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits, except to the extent otherwise provided in Section 3.12.

(A) On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule in Microsoft Project format within thirty (30) Days of the Execution Date, including key project milestones as reasonably [agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-23-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by Section 62-23-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer (after Buyer's consultation with Retail Customer), except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed Solar Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer (such acceptance not to be unreasonably withheld, conditioned, or delayed) who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted

to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this PPA with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least thirty (30) Days' prior notice of the approximate test date and ten (10) Days' prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with twenty-four (24) hours advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements, including executing customary waiver and indemnity agreements, and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this PPA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this PPA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack

thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five-minute and real-time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet operability performance requirements defined in IEEE Standard 2800-2022, Sections 5 through 8, for voltage level, harmonics, power factor, VARs, Ancillary Services (to the extent that Project equipment capable of meeting such standard is commonly and reasonably available for procurement and installation in the Project) and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. Seller shall provide Buyer with all real time measurement parameters of the Project including system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Sections 9, system protection awareness and control devices (to the extent that Project equipment capable of meeting such standard is commonly and reasonably available for procurement and installation in the Project) to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers requirements and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day's written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than ninety (90) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all Operating Procedures and thereafter shall collaborate with Buyer to finalize mutually agreeable, written Operating Procedures within the

timeline defined in Table 2 of Exhibit O. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, and Solar Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties, to be provided substantially in the form of Exhibit [ ] or such other form as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, the PPA, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this PPA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following Commercial Operation Year. Should Buyer desire to change the reporting dates noted above, the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a non-binding notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's Installed Capacity, including the duration of such event. Each Scheduled Maintenance Outage for the Commercial Operation Year will be subject to approval by Buyer, not to be unreasonably withheld. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Project's generation for any reason during daylight hours during May 1st through September 30th without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Seller may, in its sole discretion, perform scheduled maintenance on any components of the Project, so long as such

maintenance is performed entirely during nighttime hours. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Metered Output to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Except as allowed under Section 12.1(A)(4), Seller shall not sell or divert Solar Energy Output to any Person other than Buyer.

10.8 Performance Tests. "**Performance Tests**" means the Commissioning Performance Test, the Annual Performance Tests, and Buyer-Requested Performance Tests as described in this Section 10.8 and in Sections 10.9, and 10.10. Performance Tests shall be performed to verify compliance of the solar photovoltaic plant net AC capacity at the Point of Delivery with the Guaranteed Solar Capacity.

(A) Seller shall conduct a performance test prior to the Commercial Operation Date in accordance with applicable provisions of this Section 10.8 (the "**Commissioning Performance Test**"). The Commissioning Performance Test shall be determined to be satisfied when the Performance Test Ratio determined from the Commissioning Performance Test results in a value greater than or equal to 1.0 (or .9 as allowed under Section 3.8) without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. In the case that the Performance Test Ratio determined from the Commissioning Performance Test is below 1.0, Capacity Shortfall Damages shall be due from Seller in accordance with Section 3.8 of this PPA. Capacity Shortfall Damages shall be applied to a Delayed Capacity value equivalent to the Guaranteed Solar Capacity multiplied by (1 - the as-tested Performance Test Ratio) and then multiplied by the Capacity Shortfall Damage rate identified in Section 3.8.

(B) Seller shall conduct a performance test in accordance with this Section 10.8 in each Commercial Operation Year after the Commercial Operation Date (each, an "**Annual Performance Test**"). Each Annual Performance Test shall be performed no earlier than nine (9) months and no later than fifteen (15) months from the completion of the previous Annual Performance Test or Commissioning Performance Test as mutually agreed by the Parties.

(C) Annual degradation rates included in Exhibit K will be used in the Annual Performance Test PVSYST Model for the purpose of Annual Performance Tests described in this Section 10.8. Annual degradation rates identified in Exhibit K shall be applied as incremental to either (i) the actual degradation experienced and measured through the prior Commercial Operation Year's Performance Test, or (ii) if the prior Commercial Operation Year's Performance Test does not measure degradation, the rate identified in Exhibit K for the prior Commercial Operation Year.

(D) The Commissioning Performance Test, Annual Performance Tests, and Buyer-Requested Performance Tests shall be conducted in accordance with ASTM E2848-13, except where deviations are provided in this Section 10.8(D).

(1) The reporting conditions ("**RC**") will be developed in accordance with ASTM E2939-13 and will utilize site measured irradiance and ambient temperature data collected during the Performance Test. The same RC will be used for computing the Model Rated Power and Test Rated Power using their respective regression equations.

(2) The Performance Test period will include at least five (5) days of data and at least fifty (50) filtered data points.

(3) Model Rated Power and Test Rated Power shall account for losses to the Point of Delivery.

(4) The result from an Annual Performance Test or Buyer-Requested Performance Test is the ratio of Test Rated Power to Model Rated Power (the "**Performance Test Ratio**").

(5) "**Test Rated Power**" shall be the value produced by the regression of filtered site measured power and site measured weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(6) "**Model Rated Power**" shall be the value produced by the regression of filtered Annual Performance Test PVSYST Model power and filtered model weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(7) The Model Rated Power will be calculated using the Annual Performance Test PVSYST Model. Site measured POA irradiance will be used as the irradiance input to the Annual Performance Test PVSYST Model.

(8) The PVSYST model utilized by Seller to predict the Annual Generation Forecasts included in Exhibit L will be used as the PVSYST model for initial comparison to the actual site performance during the Commissioning Performance Test. Such PVSYST model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of the Commissioning Performance Test. Should any modifications to this PVSYST model be proposed by Seller after completion of the Commissioning Performance Test, Seller shall provide to Buyer the proposed modifications to the draft PVSYST model for review and approval. Any modifications to the PVSYST model mutually accepted by the Parties will be incorporated and the resulting modified PVSYST model together with a schedule of annual degradation will be the "**Annual Performance Test PVSYST Model**".

(9) The Annual Performance Test PVSYST Model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer within

one (1) month of the completion of the Commissioning Performance Test. The Annual Performance Test PVSYST Model will annually account for actual degradation through the prior Performance Test with incremental annual degradation added as previously agreed to by the Parties. This mutually accepted Annual Performance Test PVSYST Model will be utilized without modification, unless agreed to by both Parties, in all Annual Performance Tests and Buyer-Requested Performance Tests as well as determination of any Annual Performance Test Guarantee Damages as defined in Section 10.9.

(E) Within thirty (30) Days of the completion of a Performance Test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the Annual Performance Test.

(F) For all Performance Tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the Performance Test or re-test, and Buyer shall have the option to inspect the Project during such Performance Test or re-test.

(G) For all Performance Tests and re-tests, Seller shall provide a "**Performance Test Report**" that includes all performance data, model simulations, calculations, and test reports to the Buyer for analysis and review. Seller shall maintain records of performance testing for a minimum of five (5) years following the date the test was performed.

(H) Proposed terms associated with the irradiance conditions, degradation allowances, modeling software inputs, and the results evaluation methodology to be utilized for documenting the tested performance shall be provided by the Seller and subject to mutual agreement of the Parties.

10.9 Annual Performance Test Guarantee Damages.

(A) Seller guarantees that Annual Performance Tests shall meet or exceed the Annual Performance Test Guarantee. The "**Annual Performance Test Guarantee**" is met when the average of the Performance Test Ratio for the Annual Performance Test and the Performance Test Ratio for the previous Annual Performance Test, or the Commissioning Performance Test (i.e. 1.000) as applicable, results in a value greater than or equal to 0.95 (the "**Annual Performance Test Guarantee Ratio**") without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. If an Annual Performance Test shows that the Annual Performance Guarantee was met, then Seller shall not owe Annual Performance Test Guarantee Damages.

(B) If any Annual Performance Test shows that the Annual Performance Guarantee was not met, then Seller shall owe Annual Performance Test Guarantee Damages calculated in accordance with this Section 10.9. The calculated Energy shortfall (the "**Energy Shortfall**") shall be the total Energy delivered by Seller in the most recently completed Commercial Operation Year multiplied by the Shortfall Factor. The "**Shortfall Factor**" is one (1) minus the ratio of the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most

recently completed Commercial Operation Year and the Annual Performance Test Guarantee Ratio. These calculations shall be performed using the following formulas:

$$ES = E_n \times SF$$

$$SF = 1 - \frac{\frac{1}{2}(PTR_n + PTR_{n-1})}{APTGR}$$

Where,

ES = Energy Shortfall

$E_n$ = Energy delivered by Seller in the most recently completed Commercial Operation Year

SF = Shortfall Factor

$PTR_n$ = Performance Test Ratio for the most recently completed Commercial Operation Year

$PTR_{n-1}$ = Performance Test Ratio for the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year

APTGR = Annual Performance Test Guarantee Ratio

(C) Seller shall pay Annual Performance Test Guarantee Damages in accordance with this Section 10.9. Liquidated damages associated with failure to meet the Annual Performance Test Guarantee shall be paid in the amount equal to (x) the Solar Energy Output Payment Rate, *multiplied by* (y) the Energy Shortfall, as determined using the above calculation (the resulting amount is the "**Annual Performance Test Guarantee Damages**"), but in no event in excess of the Annual Solar Capacity Guarantee Damages Cap and the Aggregate Solar Capacity Guarantee Damages Cap.

(D) The following is an example (for illustrative purposes only) of the Energy Shortfall calculation: A Performance Test is conducted and results in an average Performance Test Guarantee Ratio of 0.930 (the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year). The Solar Energy Output Payment Rate is $[●]/MWh and the total annual Energy delivered by the Project in the most recently completed Commercial Operation Year is 130,000 MWh. Annual Performance Test Guarantee Damages shall be paid as a result of the Performance Test Ratio being less than the Annual Performance Test Guarantee Ratio of 0.95. The amount of Annual Performance Test Guarantee Damages is calculated to be [$[●]/MWh] X [130,000 X (1 - 0.930 / 0.950)] = $[●].

(E) The total Annual Performance Test Guarantee Damages payable by Seller for failure to meet the Annual Performance Test Guarantee in any Commercial Operation Year shall be capped annually at a value equivalent to Thirty Thousand Dollars ($30,000) per MW of Guaranteed Solar Capacity ("**Annual Solar Capacity Guarantee Damages Cap**"). The total

Annual Performance Test Guarantee Damages payable by Seller shall be capped in the aggregate at a value equal to Ninety Thousand Dollars ($90,000) per MW of Guaranteed Solar Capacity ("**Aggregate Annual Solar Capacity Guarantee Damages Cap**") over the Term of the PPA.

(F) Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for the failure of Seller to meet the Annual Performance Test Guarantee or the Annual Performance Test Guarantee Ratio (including in the event of any Buyer-Requested Performance Tests), shall be the payment of Annual Performance Test Guarantee Damages as and when required in this Section 10.9, up to the Annual Solar Capacity Guarantee Damages Cap and the Aggregate Annual Solar Capacity Guarantee Damages Cap; provided, however, that the foregoing shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail meet the Annual Performance Test Guarantee or the Annual Performance Test Guarantee Ratio. Any such failures shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default under this PPA.

10.10 Buyer-Requested Performance Tests. In the event of a material adverse change in expected Solar Energy Output based on monthly billing, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the conditions described in this Section 10.10. Buyer-Requested Performance Tests will be conducted as described in Section 10.8, for Buyer-Requested Performance Tests performed within the second and subsequent Commercial Operation Years.

(A) If the results of a Buyer-Requested Performance Test fail to meet the Annual Performance Test Guarantee Ratio, Annual Performance Test Guarantee Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(B) Two (2) Buyer-Requested Performance Tests may be requested per Commercial Operation Year.

(C) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

10.11 Weather Stations.

(A) Seller shall, at Seller's cost and no later than three (3) months prior to the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations ("**Weather Stations**") at the Project Site to monitor and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by Seller's engineer and agreed to by Buyer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall be of a grade equivalent to or better than those used in large-scale utility solar facility installations and include the capability for measuring, indicating, and recording ambient temperature, wind speed and direction (instantaneous and average), barometric pressure, solar radiation, and relative humidity. Seller shall submit to Buyer for review and approval, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules,

current inverters, and other prominent features, as applicable. The Weather Stations shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to be maintained by Seller and to provide an unrestricted, real-time indication of all measured parameters to Buyer and the data shall be available to Buyer via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted real time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations.

(C) Data collected from the Weather Stations shall be utilized for determination of the Solar Performance Ratio, minimum solar irradiance for determination of system availability and lost output due to curtailment or outages.

10.12 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall, along with the invoice provided pursuant to Section 9.1, provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Solar Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

## ARTICLE 11
## RECs and Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer within fifteen (15) Business Days of the RECs being created in WREGIS and available for transfer. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within fifteen (15) Business Days after written notice from Buyer of such failure, and such failure is due to Seller's fault or negligence. The RECs and Environmental Attributes transferred under this PPA are bundled with the associated Energy.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Buyer may, to the extent permitted by Applicable Law and this PPA, assign its rights, title and interest in and to any RECs and Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) [Reserved].

(E) Seller shall, at its sole expense and before commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the purpose of creating and tracking all Renewable Energy Certificates corresponding to all Metered Output including all Test Energy, and that all associated WREGIS Certificates are issued and tracked and transferred in a timely manner to Buyer. If required by WREGIS for the creation of Renewable Energy Certificates or associated WREGIS Certificates for the full Solar Energy Output, Seller at its sole cost and expense will add a meter for the Project on the low side of Seller's step-up transformer. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account. Buyer shall have the exclusive right to transfer RECs and Environmental Attributes to Retail Customer's WREGIS account, or retain the RECs and Environmental Attributes in Buyer's WREGIS account and retire the RECs and Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(F) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(G) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, which shall be Public Service Company of New Mexico, unless agreed to otherwise by Buyer and Retail Customer.

(H) Seller shall not report in any public communication, or under any program, that any of the Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer or retail Customer. During the Term, Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Environmental Attributes for Buyer to own, hold and manage in Buyer's or Retail Customer's own name and account, including any rights associated with any renewable energy information or tracking system that exists or may be

established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Environmental Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Environmental Attributes, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. Seller shall have no duty to search for third-party claims but will have the duty to inquire and investigate as appropriate to support resolution of third-party claims which it has made, or of which it has become aware or have been reported to it by Buyer. To the extent that any such public communication is allowed under Section 13.1, in any public communication concerning the Project, Project Energy or the Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Project Energy, *provided* that no portion of the foregoing affects Seller's ownership of or entitlement to Tax Benefits.

## ARTICLE 12
## Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller enters into an assignment for the benefit of creditors;

(3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller's voluntarily taking advantage of any such law by answer or otherwise;

(4) The sale by Seller to a third party, or diversion by Seller for any use, of Solar Energy Output (or any component thereof) committed to Buyer in this PPA; provided, however, during a Buyer Event of Default, Seller may sell Metered Output to third parties;

(5) Seller's actual fraud, waste, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this PPA or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date or other date mutually agreed to by the Parties in writing;

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA on more than three occasions in any rolling thirty-six consecutive month period;

(8) The Project fails, after the third anniversary of the Commercial Operation Date, to maintain an Actual Solar Availability Percentage of at least eighty percent (80%) over two (2) successive Commercial Operation Years; provided, however, for a (i) single occurrence during the Term of this PPA for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, or (ii) for two (2) occurrences during the Term of this PPA for a period of no longer than two hundred seventy (270) days each, if the Project suffers a Serial Defect, then to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer or replace the components affected by the Serial Defect, the impacts of such MPT Failure or Serial Defect(s) shall be excluded from the Mechanical Availability calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(8);

(9) The Project fails to obtain an Actual Solar Availability Percentage of at least fifty-five percent (55%) over any Commercial Operation Year; provided, however, for a (i) single occurrence during the Term of this PPA for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, or (ii) for two (2) occurrences during the Term of this PPA for a period of no longer than two hundred seventy (270) days each, if the Project suffers a Serial Defect, then to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer or replace the components affected by the Serial Defect, the impacts of such MPT Failure or Serial Defect(s) shall be excluded from the Mechanical Availability calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(9); or

(10) Seller's representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to be false or misleading in any respect;

(11) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The Delivery Term Security has been fully drawn by Buyer and, pursuant to Section 19.1, Seller has elected to not replenish up to the full initial amount thereof within ten (10) Business Days of receipt of written notice;

(3) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(4) The failure of any Seller Guarantor to be NEECH or Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) Seller's failure to make any payment due to Buyer under or in connection with this PPA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this PPA), unless remedied within ten (10) Days of receipt by Seller of written notice of such failure from Buyer;

(6) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice.

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA, unless remedied within five (5) Business Days of receipt of notice of such failure.

(8) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to deliver Energy to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including, but not limited to, the Interconnection Agreement) required to deliver Energy to the Point of Delivery;

(3) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this PPA;

(4) Seller's failure to maintain in effect any agreements required to deliver Solar Energy Output to the Point of Delivery;

(5) Seller's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Buyer;

(6) Seller fails to register the Project within WREGIS or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this PPA.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this PPA, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; *provided, however*, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable (unless otherwise stated):

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise;

(4) Buyer, in its separate merchant function capacity, willful tampering with or willful physical damage to Seller-owned facilities and Buyer fails to remediate such damage within thirty (30) Days of Seller's written demand;

(5) Buyer's assignment of this PPA except as permitted in accordance with Article 18;

(6) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer;

(7) Buyer's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Seller shall constitute an Event of Default upon the failure of Buyer to cure within thirty (30) Days of written notice from Seller to Buyer;

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer. or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(2) Any representation or warranty made by Buyer in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term, if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an uncured Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this PPA from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security, and (v) exercise its rights to terminate this PPA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to

receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. Seller shall calculate the Seller Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(B). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material performance obligation of the other Party under this PPA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss. The Parties agree that the Termination Payment does not represent such waived consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

12.8 Payment of Amounts Due. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, either Party may send the other Party an invoice for such damages or other amounts as are due to the Party providing the invoice at such time from the other Party under this PPA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this PPA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 13
Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed) to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this PPA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this PPA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this PPA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this PPA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; House Energy

consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records, subject to such Party's ability to redact information it reasonably deems competitively sensitive; *provided*, such redactions do not prevent a Party from exercising its rights and remedies and performing its obligations under this PPA.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) quarterly construction progress reports until the start of construction and monthly thereafter in such form as may be agreed to by Buyer in accordance with Sections 10.1(A) and 10.1(B), and (ii) reports, of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Solar Energy Output from, the Project in accordance with this PPA, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this PPA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Solar Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the Solar Units.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by

Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contract, and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the reasonably incurred expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30)

Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

## ARTICLE 14
## Force Majeure

14.1 Definition of Force Majeure.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises after the Execution Date that (i) is not reasonably foreseeable, (ii) is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, (iii) cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and (iv) adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(ix) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic, including COVID-19, shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this PPA is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Solar Energy Output of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii)

any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws or material or serial defects; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; (viii) a Seller Forced Outage, except to the extent caused by a Force Majeure Event; (ix) an Eligible Change in Tariff, (x) an Import Restraint, or (xi) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of three hundred sixty-five (365) Days from its inception, either Party may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this PPA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days after the Party becomes aware of the Force Majeure Event; *provided* that notice given after such ten (10) Business Day period is effective only for the period after the notice is given, of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the

Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Solar Energy Output from the Project or to deliver Solar Energy Output from the Project, then any lost production (MWh) during the Force Majeure Event shall be excluded from the determination of the Monthly Solar Output Payment as set forth in Section 8.1.

## ARTICLE 15
## Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution and delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or

hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any material violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have upon the generation of Solar Energy Output, good and marketable title to the RECs, Environmental Attributes, and Future Environmental Attributes.

(K) Seller has not sold, delivered or transferred the RECs, Environmental Attributes or Future Environmental Attributes to any other Person, in whole or in part.

(L) All right, title and interest in and to the RECs, Environmental Attributes and Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, §§ 62-16-1 *et seq.,* and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this PPA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(P) This PPA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(Q) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1, and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

## ARTICLE 16
## Insurance

16.1 Evidence of Insurance. Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G-1 and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the Term of this PPA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this PPA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this PPA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17
## Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the PPA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this PPA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 as Confidential Information in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval, in connection with (i) the execution and performance of this PPA; (ii) a final order or

other regulatory determination from the NMPRC (A) that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement and (B) approving revisions to the Special Services Contract; (iii) any waivers as set forth in Buyer's request for approval of this PPA; and (iv) the execution and performance of the additional renewable energy procurement under the Special Service Contract (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to a motion for rehearing or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this PPA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This PPA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if neither Buyer nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made by Buyer or Retail Customer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this PPA should remain in effect. Upon automatic termination, this PPA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA. If the Parties and Retail Customer are unable to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties and Retail Customer conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by December 31, 2025 ("**Regulatory End Date**"), then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension

of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

## ARTICLE 18
## Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) a collateral assignment to a Lender, in accordance with Section 18.6, (ii) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; or (iii) any assignment or transfer of this PPA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clause (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) except in the case of an assignment or transfer pursuant to clause (ii), delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA.

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this PPA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this PPA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this PPA with the Affiliate as if such Person had been named under this PPA; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this PPA made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this PPA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this PPA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this PPA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other

representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this PPA to Seller's Lenders pursuant to Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this PPA.

## ARTICLE 19
## Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed Solar Capacity ("**Development Security"**) within the earlier of (i) ninety (90) Days after the Execution Date and (ii) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed Solar Capacity (the "**Delivery Term Security**"). Seller may, at its discretion, convert all or part of the Development Security to Delivery Term Security by written notice to Buyer. Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer except that the aggregate amount of such replenishment during the Term shall not exceed three times (3x) the Delivery Term Security requirement. Development Security shall not be replenished. Buyer will return the Development Security to Seller in full within fifteen (15) Days after Seller posts Delivery Term Security. Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) day termination of this PPA in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is NEECH or Creditworthy, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods

unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) days of expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this PPA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this PPA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this PPA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this PPA, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this PPA.

## ARTICLE 20
## Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any one of them may be

liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses, and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall

not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21
## Governmental Charges

21.1 Allocation of Governmental Charges. In the event of any contradiction between this Section 21.1 and Section 9.7, Section 9.7 shall control. In the event of any contradiction between this Section 21.1 and Section 22.2, this Section 21.1 shall control. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Solar Energy Output that are imposed on the making available of Solar Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Solar Energy Output that are imposed at and from the taking of Solar Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

## ARTICLE 22
## Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties.

Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Certain Third Party Beneficiary Rights.

(A) In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly permitted in this PPA in Section 22.4(B), nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this PPA, Retail Customer is an express third-party beneficiary to this PPA. The provisions of this PPA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as express third party beneficiary hereof as if it were a Party hereto. For the avoidance of doubt and without limiting the foregoing, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer notice of a change in the location of the Site;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project;

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the PPA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the PPA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed.

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to its employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification.

Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations.

Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability.

In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or

unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments.

The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to approval by any Governmental Authority with jurisdiction over this PPA, this PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further,* that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect.

This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings.

Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

22.12 Counterparts.

This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum.

The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this PPA shall be brought in a court of competent jurisdiction in the United States District Court for the District of New Mexico; the parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. . **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY**

**ACTION ARISING OUT OF THIS PPA. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "**Receiving Party**" refers to the Party receiving information from the other Party.

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, technical advisors, contractors, consultants, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this PPA, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-

confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this PPA that relates solely to this PPA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this PPA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall notify Buyer as soon as reasonably practicable of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("**Data Breach**") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal

process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access.

(A) Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this PPA and the Environmental Attributes that are generated (or to be generated) under this PPA and delivered or required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain (if such rights are held by someone other than Seller) and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project (which reasonableness may vary according to the notice Seller receives from Buyer) for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this PPA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this PPA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Should Seller have a dedicated operations and maintenance or other building associated with the Project, signage will be included inside such building(s), the size and style of which will be reasonably and mutually agreed between Seller and Buyer after consultation with Retail Customer, displaying information about Retail Customer's affiliation with the Project and Retail Customer's logo. In addition, Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller,

visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this PPA constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code § 101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the PPA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the following provisions apply for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Seller shall provide Buyer all information as Buyer shall reasonably request for Buyer or Retail Customer to comply with the Scope Reporting Rule.

(F) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use commercially reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information

that, based on the advice of its counsel is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section 22.18.

22.19 Telephone Recording. Each Party to this PPA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this PPA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Facility or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this PPA in accordance with Section 12.4. In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses incurred by Seller, Seller Parties or Contractors are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will promptly report to Buyer in writing of any actual or threatened breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Government Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Facility or the Site, Seller represents and warrants that, to the best of its knowledge, none of its Contractors has engaged in offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. Seller will require (through contract or other obligation) and enforce Contractors expressly agreement to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason

to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and Buyer shall have the right to withhold further payments after Buyer has provided Seller notice of such audit without any liability to Seller until Buyer is reasonably satisfied that no breach has occurred; provided that Buyer shall make such payments with interest at the Default Rate if Buyer is reasonably satisfied that no breach has occurred. If the PPA is terminated pursuant to an Event of Default under Section 12.1(A)(10), Buyer shall have no obligation to make further payments hereunder.

22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party or its Contractors to be responsible for, exporting and importing any equipment or property (to the extent such equipment or property are exported or imported) that Seller, Seller Parties or Seller's Contractors, as applicable, import with respect to the Facility, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority with respect to exporting or importing such equipment or property.

(B) In no instance may Seller, Seller Parties or Seller's Contractors list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List (at the time provided), or (ii) originated, offloaded or transferred to a different ship or carrier in any Sanctioned Territory (at the time of origination, offloading or transfer, as applicable).

(D) At Buyer's written request, Seller shall provide to Buyer all Trade Control related documentation in Seller's possession which Seller may share in compliance with confidentiality obligations, as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with), or respond to enquiries from any Governmental Authority in relation to, Trade Controls; provided that, if such Trade Control related documentation is in possession of Seller's Contractors but not Seller, Seller shall make commercially reasonable efforts to request from such Contractor the required documentation and, to the extent required, permission to disclose such documentation to Buyer.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and that as of the Execution Date none of its Contractors is a Sanctioned Person and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not directly engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure

that its Contractors expressly agree in writing to Trade Controls undertakings, representations, and warranties substantially similar to this Section 22.21 (Trade Controls) with respect to any equipment that such Contractor imports into the United States or such Contractor's work in connection with this Agreement; provided that, a failure by Seller solely to comply with its obligations under this clause (g) shall not be a default under this Agreement.

(H) Notice. If Seller becomes aware that (a) any breach of the terms of If Seller becomes aware that (a) any breach of the terms of this Section 22.21 has occurred or is likely to occur, or (b) Seller, any Seller Party, or any Contractor has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days thereof.

(I) Excusal. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal under Sanctions; provided that if such excused performance (including making any payments) becomes no longer illegal under Sanctions, Buyer shall perform such obligation (including making of any previously excused payment).

(J) Subject to Section 12.1(B)(8) and the cure period therein, Buyer may terminate this PPA, within five (5) Business Days and without further liability, upon written notice to the Seller, if the Seller has breached Section 22.21(A), (B), (C), or (E), in which case, the Buyer shall have no obligation to make further payments to Seller to the extent that making such payments would be illegal under Sanctions.

22.22 Change in Law; Market Structure.

(a) Change in Law. If a Change in Law occurs that makes it impossible or illegal for a Party to perform an obligation under this PPA lawfully, the Parties shall negotiate in good faith to amend this PPA within sixty (60) Days after the affected Party provides written notice to the other Party with respect to such Change in Law as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties as of the Effective Date; provided, however, that a waiver by the Party owed the illegal or impossible performance of the obligation to perform shall restore the allocation without need for an amendment or further action of the Parties. In the absence of such a waiver, if the Parties fail to enter such an amendment by the end of such sixty (60) Day period, the Parties shall refer the issue for dispute resolution under Section 13.8.

(b) Change in Market Structure. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will or can participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, Retail Customer or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform this PPA, the Parties and Retail Customer shall negotiate in good faith to amend this PPA to resolve such

changes in order to effect performance of this PPA, at the least possible cost to the Parties and Retail Customer, consistent with this PPA to the extent possible.

*[Signature page(s) follow]*

IN WITNESS WHEREOF, the Parties have caused this PPA to be duly executed as of the date first above written. This PPA shall not become effective as to either Party unless and until executed by both Parties

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

Name Omni Warner

Title Vice President

STAR LIGHT ENERGY CENTER, LLC

By: _____

Name: Anthony Pedroni

Title: Vice President

Legal Review Completed AF

[Signature Page to Power Purchase Agreement]

**EXHIBIT A**
(to Power Purchase Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: Star Light Energy Center, LLC
2. Location: Valencia County, New Mexico

   Latitude: 34°44'22.46"N Longitude: 106°47'34.25"W
3. Owner (if different from Seller): N/A
4. Operator: Seller or Affiliate thereof
5. Equipment/Fuel:
   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Solar PV
   b. Total number of units at the Project: Approximately 32 inverters
   c. Total nameplate capacity (MWp): Approximately 130 $MW_{DC}$
   d. Total capacity at point of delivery: 100 $MW_{AC}$ at the Point of Delivery
   e. Additional technology-specific information: Approximately 236,240 photovoltaic modules
6. Project Schedule:

| Key Milestone | Date |
|---|---|
| LGIA Execution | 7/30/2024 |
| Major Equipment Supply Agreements Executed | 12/2025 |
| Discretionary Permits | 12/2025 |
| Close Financing | 12/1/2026 |
| 30% Design Complete | 8/2025 |
| Start of Project Construction | 12/2025 |
| First Major Equipment Delivered to Site | 2/2026 |
| Interconnection In-Service Date | 7/1/2026 |
| Commissioning Start Date | 10/2026 |
| Expected Commercial Operation | 12/1/2026 |
| Guaranteed Start Date | Defined in 3.1 |

7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the

PPA.

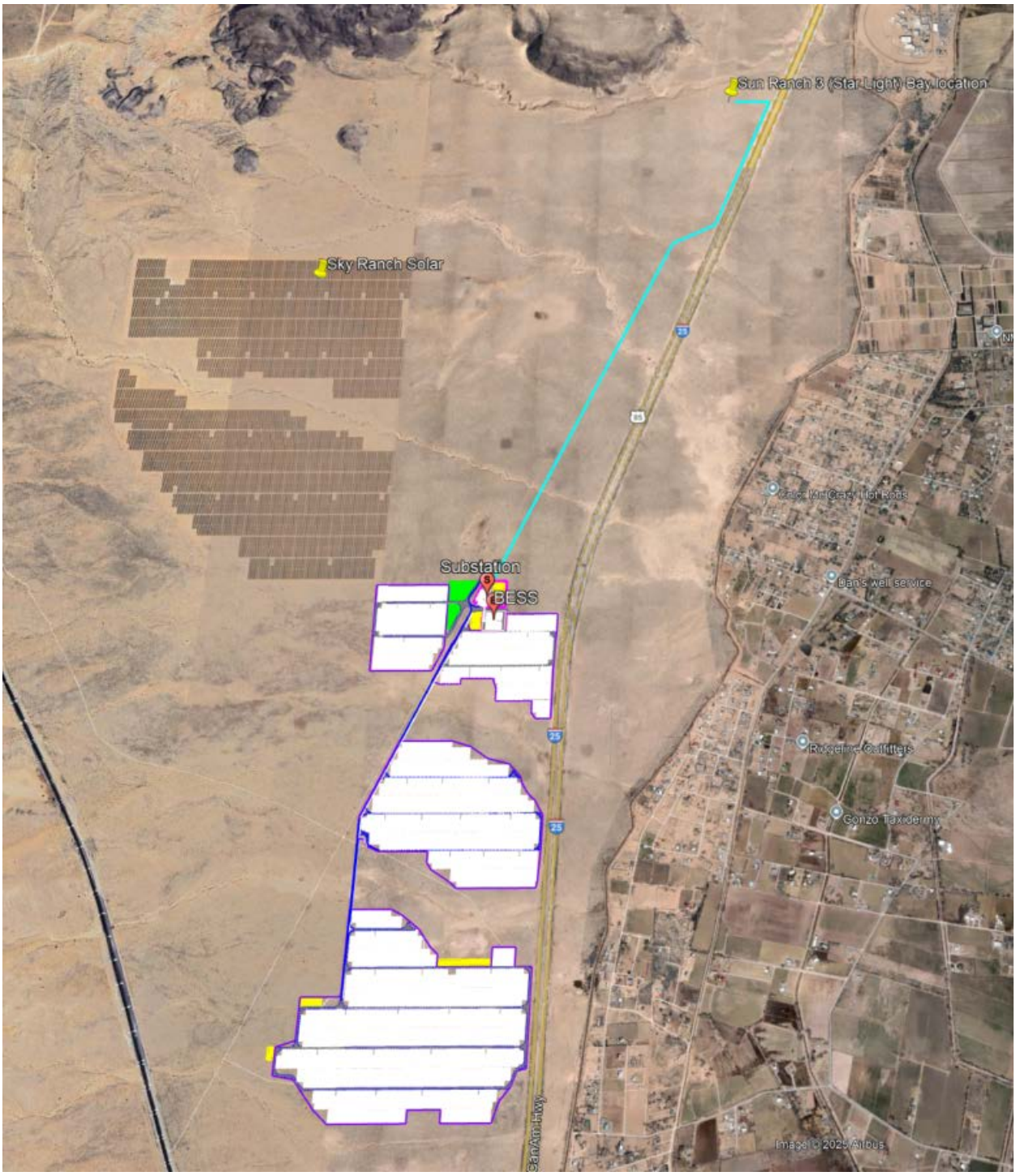

Sun Ranch 3 (Star Light) Bay location
Sky Ranch Solar
Substation
BESS
Dan's well service
Gonzo Taxidermy
San Ann Hwy
Imagery © 2025 Airbus

**EXHIBIT B**
(to Power Purchase Agreement)

**ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram of the Project, which will be provided by Seller within ninety (90) Days of the Execution Date. The diagrams indicate the following:

   - Interconnection Facilities;
   - the network upgrades;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);

   - communications and telemetry configuration with associated redundancy;
   - the House Energy power source and associated dedicated electric meter; and
   - redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is PNM's 115kV Sun Ranch Switching Station.

**EXHIBIT C**
(to Power Purchase Agreement)

**DESCRIPTION OF SITE**

BEING PART OF SECTION 13 AND 24, T-6-N, R-1-E, NMPM, WEST OF INTERSTATE 25, AND LOTS 32-34, LOT 47, LOT 48, AND THE NORTH HALF OF LOT 49, SECTION 23, T-6-N, R-1-E, NMPM, VALENCIA COUNTY, NEW MEXICO, OUT OF A TRACT TO THE NEW MEXICO DEVELOPMENT PARTNERS, L.P. ACCORDING TO THE DOCUMENT RECORDED IN BOOK 358, PAGE 15579, VALENCIA COUNTY, NEW MEXICO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 2-INCH IRON PIPE WITH CAP MARKED "RPLS 7438" (GRID N:1366048.33, GRID E:1475569.33) FOUND FOR THE NORTHWEST CORNER OF SECTION 13, T-6-N, R-1-E, NMPM, VALENCIA COUNTY, NEW MEXICO;

THENCE NORTH 89°49'28" EAST, ALONG THE LINE COMMON WITH SAID SECTIONS 12 AND 13, A DISTANCE OF 3,494.04 FEET TO A CALCULATED POINT ON THE WEST RIGHT OF WAY OF INTERSTATE HIGHWAY 25, (300' RIGHT OF WAY), FOR THE NORTHEAST CORNER OF THIS TRACT, LYING SOUTH 11°04'32" WEST, A DISTANCE OF 48.47 FEET FROM A T-BAR MONUMENT MARKED "780+00" FOUND ON SAID RIGHT OF WAY;

THENCE ALONG A CURVE TO THE LEFT, WITH SAID WEST RIGHT OF WAY LINE, HAVING A RADIUS OF 11,610.42 FEET, AN ARC LENGTH OF 2,057.93 FEET, A DELTA ANGLE OF 10°09'20", A CHORD BEARING OF SOUTH 05°52'18" WEST AND A CHORD DISTANCE OF 2055.24 FEET TO A FOUND T-RAIL MONUMENT FOR A POINT OF TANGENCY;

THENCE SOUTH 00°47'38" WEST, WITH SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 6,851.85 FEET TO A CALCULATED CORNER FOR A POINT OF CURVEATURE TO THE RIGHT;

THENCE ALONG A CURVE TO THE RIGHT, WITH SAID RIGHT OF WAY LINE, HAVING A RADIUS OF 22,770.72 FEET, AN ARC LENGTH OF 683.97 FEET, A DELTA ANGLE OF 1°43'16", A CHORD BEARING OF SOUTH 01°39'33" WEST AND A CHORD DISTANCE OF 683.94 FEET TO A CALCULATED POINT FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 89°57'11" WEST, ACROSS SAID SECTION 24, A DISTANCE OF 3,807.06 FEET TO A CALCULATED CORNER ON THE WEST LINE OF SAID LOT 49 FOR THE SOUTHWEST CORNER OF THE NORTH HALF OF SAID LOT 49, FOR THE EXTERIOR CORNER OF THIS TRACT;

THENCE NORTH 00°20'16" EAST, WITH SAID COMMON LINE, A DISTANCE OF 330.97 FEET TO A CALCULATED CORNER FOR THE COMMON CORNER OF SAID LOTS 47,

48, 49, AND 50 FOR AN INTERIOR CORNER OF THIS TRACT;

THENCE NORTH 89°39'38" WEST, WITH THE COMMON LINE OF LOTS 47 AND 50, A DISTANCE OF 661.17 FEET TO A CALCULATED CORNER FOR THE COMMON CORNER OF LOTS 46, 47, 50, AND 51 FOR AN EXTERIOR CORNER OF THIS TRACT;

THENCE NORTH 00°19'48" EAST, WITH THE COMMON LINE OF LOTS 46 AND 47 AND LOTS 34 AND 35, A DISTANCE OF 1323.29 FEET TO THE COMMON CORNER OF LOTS 30, 31, 34, AND 35 FOR AN INTERIOR CORNER OF THIS TRACT;

THENCE SOUTH 89°41'09" EAST, WITH THE COMMON LINE OF LOTS 31 AND 34, A DISTANCE OF 661.35 FEET TO THE COMMON CORNER OF LOTS 31, 32, 33, AND 34 FOR AN INTERIOR CORNER OF THIS TRACT;

THENCE NORTH 00°20'16" EAST, WITH THE COMMON LINE OF LOTS 31 AND 32, A DISTANCE OF 661.86 FEET TO THE COMMON CORNER OF LOTS 17, 18, 31, AND 32 FOR AN EXTERIOR CORNER OF THIS TRACT:

THENCE SOUTH 89°41'30" EAST, WITH THE COMMON LINE OF LOTS 17 AND 32, A DISTANCE OF 661.44 FEET TO THE EAST MOST COMMON CORNER OF LOTS 17 AND 32 AND THE COMMON LINE BETWEEN SECTIONS 23 AND 24 FOR AN INTERIOR CORNER OF THIS TRACT;;

THENCE NORTH 00°20'43" EAST, WITH THE EAST LINE OF SAID SECTION 23, COMMON WITH THE WEST LINE OF SAID SECTION 24, A DISTANCE OF 1958.80 FEET TO A 1-INCH IRON PIPE WITH AN ALUMINUM CAP MARKED "14/13, 23/24, RPLS 7438" FOUND FOR THE COMMON CORNER TO SECTIONS 13, 14, 23, AND 24 FOR AN INTERIOR CORNER OF THIS TRACT;

THENCE NORTH 00°31'58" WEST, WITH THE COMMON LINE TO SECTIONS 13 AND 14, A DISTANCE OF 5273.26 FEET TO THE POINT OF BEGINNING, CONTAINING 764.906 ACRES, MORE OR LESS

**EXHIBIT D**
(to Power Purchase Agreement)

**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**Notices:**

**Delivery Address:**

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

**Invoices:**

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:
PNMEAM@pnmresources.com

**Scheduling:**

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

**Payments:**

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

**Wire Transfer:**

Wells Fargo Bank
ABA# [●]
Albuquerque, New Mexico
ME Whsle Pwr Depository: [redacted]
Attn: EA-Wholesale Power Marketing

**Star Light Energy Center, LLC**

**All Notices/Invoices:**

**Delivery Address:**

STAR LIGHT ENERGY CENTER, LLC
Attn: Business Management
700 Universe Blvd.
Juno Beach, FL 33408
Phone: 561-801-8079
Email: DL-NEXTERA-BM-NEWMEXICO@nexteraenergy.com

With copy to:

NextEra Energy Resources, LLC
Attn: General Counsel
700 Universe Blvd.
Juno Beach, FL 33408
Email: NEER-General-Counsel@nexteraenergy.com

**Wire Transfer:**

Bank of America
ABA: [redacted]
Acct: [redacted]

**With additional Notice of an Event of Default, termination and other legal notices to:**

NextEra Energy Resources, LLC
Attn: Business Management
700 Universe Blvd.
Juno Beach, FL 33408
Phone:561-801-8079
Email:DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com

**Project Manager:**

**Contract Manager:**

Public Service Company of New Mexico
Attention: Eric Meadors
2401 Aztec Dr. NE
Albuquerque, NM 87107
Telephone: (505) 241-2179
Email: eric.meadors@txnm.com

**With additional Notice of an Event of Default, termination and other legal notices to:**

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

**With a copy to:**

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

NextEra Energy Resources, LLC
Attn: Ashley Sgaliardich – Project Director
700 Universe Blvd.
Juno Beach, FL 33408
Phone: 561-876-5215
Email:Ashley.sgaliardich@nexterenergy.com

**EXHIBIT E**
(to Power Purchase Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

| PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION | GOVERNMENTAL ENTITY |
|---|---|
| Floodplain Permit | City of Belen |
| Structural Building Permit | New Mexico Construction Industries Division (NMCID) |
| Electrical Building Permit | New Mexico Construction Industries Division (NMCID) |
| Special Use Permit (SUP) | City Of Belen |
| Determination of No Hazard (DNH) | FAA |

# EXHIBIT F

(to Power Purchase Agreement)
**COMMISSIONING AND ANNUAL TESTS**

**Commissioning Tests**

- String Insulation Resistance and Continuity Tests
- String Voc measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- SCADA Functionality Test (or equivalent)
- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- Voltage Setpoint Functionality Test
- Buyer Data Link Functionality Tests (See Section 3.4)
- Project Reliability Test
- Commissioning Performance Test (See Section 10.8)

**Annual Tests**

- Annual Performance Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

## A. SCADA Functionality Test

**Purpose:**
This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering ("**POE**"). This test must be performed prior to energization of the Project.

**Procedure:**
Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall then contact Buyer's POE Team four (4) to six (6) weeks in advance to submit a database modification request (DBMOD) and request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. Testing phases 1-3 (below) require only POE contacts, but phase 4 will also require Buyer's Operator support.

The test shall include, but is not limited to, the following verification:

1) Status points
   - Verify POE is receiving the intended state of Seller's switches and breakers
   - Verify POE can see and change the value of states of Seller's switches and breakers
   - Verify the functionality of the local/remote mode indication status
2) Analog points
   - Verify POE is receiving the intended value
   - Verify POE receives a changed value
   - Verify values have the correct scaling
3) Accumulator points (as applicable)
   - Verify POE is receiving an inserted value
   - Seller reverts to original value then verifies POE receives the new value
   - Verify values have the correct scaling
4) Control points (as applicable)
   - Verify the functionality of all breakers to be controlled by Buyer's POE
   - Verify the functionality of all switches to be controlled by Buyer's POE
   - Verify POE can control all reclosers
   - Verify on-site personnel have capability of changing states and values
   - Verify the functionality of all Setpoints
   - Verify the functionality of all feedback points

Completion of this test will be acknowledged verbally between Buyer's personnel and the stakeholders involved. This test must be repeated for changes to the states table(s) and/or list of points.

**B. Automatic Generation Control (AGC) Functionality Test**

Purpose**:**
This test will demonstrate the ability of the Project to synch to AGC. This test will occur after the Project has energized.

System **starting state:**
The Project will be in the on-line state and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("**EMS**") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure**:**
Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team four (4) to six (6) weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour operational activities.

**Remote Mode Testing**
Seller will set the Project to REMOTE mode, and verify the Project accepts AGC.

- Operator will send a setpoint to the Project
- Validate the Project responds to the setpoint
- Operator will send a setpoint above and/or below Project operation limits
  - Validate the Project sends alarms

Buyer's Operator will set the AGC Control mode to MARKET:
- Validate the Project responds to a DOT from CAISO
- Validate the setpoint and feedback matches the DOT

Buyer's Operator change the Project to MARKET in AGC
- Validate the Project changes the control mode

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG
- Hold for up to 10 minutes
- Validate the Project responds to ACE of +/- 10 MW

**Local Mode Testing**
On-site personnel change the Project to LOCAL mode
- Validate the Project changes from REMOTE to LOCAL mode
- Validate the Project follows gross MW requested on-site
- Validate the Project does not respond to setpoint changes

System end state:
The Project will be in the on-line state and with control mode set to LOCAL.

## C. Voltage Setpoint Functionality Test

- **[LATER]**

## D. Buyer Data Link Functionality Test

The Buyer Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Project control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party), and assist as necessary to set up the Buyer Data

Link.

Seller shall prepare and submit to Buyer a Data Link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Buyer Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Buyer Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

## E. Project Reliability Testing

**D.1** Operational Reliability

A. Purpose of Test

To demonstrate the short-term reliability of the Project.

B. Test Procedure

The Project shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the Project remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any material alarms, faults, trips, or manual intervention required, except that Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity shall be available for the Commissioning Performance Test.

## F. Performance Testing

**Purpose**

This Section outlines the procedures and requirements for the Commissioning Performance Test and the Annual Performance Tests (each, a "Performance Test"), and will verify the plant is operating according to specification by achieving (i) at least ninety percent (90%) of the Guaranteed Solar Capacity during the Commissioning Performance Test, and (ii) the Annual Performance Test Guarantee during the Annual Performance Tests, under and pursuant to Section 10.9(A) of this PPA.

**Definitions**

"Annual Degradation" – The agreed upon annual AC degradation rate of the system is as defined in Section 10.8(C) and Exhibit K of the PPA. For any Performance Test, the annual degradation will be applied as incremental degradation from the actual degradation experienced and measured through the prior Commercial Operation Year's Performance Test, with such actual degradation

not to result in a solar capacity less than the Degradation-Adjusted Annual Guaranteed Solar Capacity value in Exhibit K.

"Annual Performance Test PVSYST Model" – The Annual Performance Test PVSYST Model including any post-processing that is based on the as-built drawings and adjusted for degradation, soiling, and albedo as discussed within this Exhibit F. The model will include the Annual Degradation, measured albedo and soiling during the test and remove any assumptions for snow and availability.

"Annual Performance Test Guarantee" – An average Performance Test Guarantee Ratio of at least ninety-five percent (95%).

"Minimum Data Points" – Occurs when at least 150 allowable 5-minute qualifying data points meeting the requirements set forth in this Exhibit F are recorded after all data filtering has occurred as outlined herein.

"Model Rated Power" – The value produced by the regression of filtered PVSYST model power and filtered model weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Model Rated Power as calculated shall account for losses to the Point of Delivery and shall be determined using the procedures outlined herein. Parties shall work in good faith to adjust losses in the event they are impacted by additional project phases on a shared line. Regression of Model Rated Power data points shall be performed for the thirty (30) Days centered about the Performance Test Measurement Period and for data points that are within +/- 30% of the Reporting Condition Total Plane of Array Irradiance. Range of irradiance values which exceed Reporting Condition Total Plane of Array Irradiance +/- 30% will be excluded, unless poor testing conditions and schedule constraints require up to 50%.

"Reporting Conditions" – The Total Plane of Array Irradiance ($POA_{total}$), ambient temperature, and wind speed calculated by taking the median of the measured data set during the Performance Test Measurement Period will be used as the reporting conditions using the procedures outlined in general accordance with ASTM E2939 and this Exhibit F.

"Performance Test Measurement Period" – The period when the Performance Test is performed, which period shall be at least five (5) Days and shall continue for consecutive additional Days until the Minimum Data Points have been met, which may be up to a total of ten (10) days, depending on weather conditions during the test. If after ten (10) Days the Minimum Data Points have not been achieved, the data collected will be used provided at least 150 qualifying data points of five-minute duration have been collected. Notwithstanding the above, if the Parties mutually agree that a sufficient quantity of qualifying data points have been collected during a test to determine an accurate test result, the duration of the Test and the quantity of required qualifying data points required herein may be reduced.

"Performance Test Ratio"– The Test Rated Power divided by the Model Rated Power, calculated to the nearest 0.1%.

"Revenue Meter" – The revenue meter for the Project shall be the revenue grade Primary Metering Device installed at the high side of each GSU, or as otherwise mutually agreed by the Parties.

"Test Rated Power" – The value produced by the regression of filtered site measured power and site measured weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Test Rated Power of the Generating Facility shall account for losses to the Point of Delivery and shall be calculated using the procedures outlined herein.

"Total Plane of Array Irradiance ($E_{TOTAL}$)" – The sum total of the front plane of array irradiance and the rear plane of array irradiance multiplied by the Bifaciality Factor of the modules as shown in Equation 1 below. For Test Rated Power the $E_{REAR}$ will also be multiplied by the Rear Shading Factor defined in Table 2 of Appendix 2 to account for loss between the rear POA sensor and the module.

Equation 1:

$$E_{TOTAL} = E_{POA} + E_{REAR} * \varphi * R_{SH}$$

Where

$E_{POA}$ = Measured front side POA
$E_{REAR}$ = Measured rear side POA
$\varphi$ = Bifaciality Factor as defined on the manufacturer's datasheet
$R_{SH}$ = Rear shading factor

**Performance Test Procedure**

1. Battery system will be turned off over testing interval. In the event battery impacts performance or completion of test, parties will work in good faith to cease battery operations or modify procedure.
2. At least ninety (90) Days prior to the first day of the first Performance Test Measurement Period, a draft Performance Test Plan, including a detailed Performance Test Procedure shall be submitted to the Buyer by the Seller for Buyer's review and comment. The Performance Test Procedure shall:

    2.1. be in general accordance with ASTM E2848 and ASTM E2939 or other ASTM standards as mutually agreed by the Parties;
    2.2. include the PVSyst model to be utilized for determination of Model Rated Power. The PVSyst model for the Commissioning Performance Test shall result in a total Annual Generation Forecast that meets or exceeds the Annual Generation Forecast included in Exhibit L;
    2.3. include the 8760 generation forecast resulting from the PVSyst model, including the following columns;
        2.3.1. Date & Time (MM/DD/YYYY hh:mm)
        2.3.2. Plane-of-Array Irradiance Front (Globinc, W/m2)
        2.3.3. Plane of Array Irradiance Rear (GlobBak, W/m2)
        2.3.4. Module Temperature (TArray, °C)
        2.3.5. Ambient Temperature (TAmb, C)

2.3.6. Near Shadings Beam Loss (ShdBLss, W/m2)
2.3.7. Inverter Limitation due to Minimum Voltage (IL_Vmin, kW)
2.3.8. Inverter Limitation due to Maximum Power (IL_Pmax, kW)
2.3.9. Available Energy at Inverter Output (EOutlnv, kW)
2.3.10. Energy Injected into Grid (E_Grid, kWh)

2.4. include the linear regression coefficients for the full 8760 generation forecast; and

2.5. include a completed Appendix 2 of this Exhibit F, including the PVSyst model inputs and assumptions utilized in the PVSyst model.

Seller shall incorporate all of Buyer's reasonable comments into the final Performance Test Plan and Performance Test Procedure and resubmit the same for Buyer's confirmation of conformance with this Exhibit F and applicable ASTM standards (such approval not to be unreasonably withheld or delayed).

3. The Seller shall give written notice to the Buyer in accordance with Section 10.2 of this PPA for the Commissioning Performance Test and at least ten (10) Business Days prior to the start of any Annual Performance Test.
4. Seller shall perform the Performance Test in accordance with the final approved Performance Test Procedures described within this Exhibit F and any agreed modification thereof.
5. Performance Test Procedures shall identify the final Reporting Conditions and Model Rated Power using the Annual Performance Test PVSYST Model, and data filters described below.
6. The following input parameters shall be measured during the Performance Test (collectively, the "Input Parameters"):

- Front Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the front side of the PV array in the Project during the qualifying data points. Any significant shading during any aggregation interval is cause to exclude that data record from the regression.
- Rear Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the rear side of the PV array in the Project during the qualifying data points.
- Ambient Temperature: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit F.
- Wind Speed: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit F.
- Soiling: Soiling loss in the Annual Performance Test PVSYST Model shall utilize the lesser of (i) the measured value during the test, (ii) values measured on site from mutually agreed PV array samples or (iii) a value of 1.25% or otherwise as mutually agreed by the Parties.
- Revenue Meter Energy Generation: Energy as recorded by the Revenue Meter and accounting for losses to the Point of Delivery during the Performance Test Measurement Period.
- Inverter-Level Power Generation: AC output data for each inverter shall be provided for the purposes of identifying periods of inverter clipping.
- Inverter-Level Power Factor: Power factor output data for each inverter shall be provided

for the purposes of identifying periods of inverters performing outside of the designed power factor threshold.

7. During the Performance Test Measurement Period, irradiance, power generation and other data shall be reported at no greater than one (1) minute intervals, consisting of averaged sampled data. All data shall be reported in time-synchronized intervals.
8. Data shall be averaged and filtered in accordance with the procedures below:

    8.1. Missing Data: Missing records shall be marked as missing with a non-numeric identifier. Missing records shall not have a value included in the analysis but shall be documented. At least 50% of sensors for each measured parameter must be operational to consider data points as valid.

    8.2. DAS Equipment Malfunction: Data records with invalid Input Parameters (e.g. all sensor readings reported as out of range by the DAS) shall also be marked as invalid. If more than a few averaging intervals in a data collection period are affected by DAS errors or equipment malfunctions, Seller shall investigate and resolve this condition prior to proceeding with the test.

    8.3. Below Minimum Irradiance: To avoid large uncertainty in results due to increased impact of variable losses at low irradiance, all records with a minimum Total Plane-of-Array Irradiance input parameter of 200 $W/m^2$ or less shall be marked as irradiance too low and the data will not be used in the test. This shall be in addition to the ASTM2848-9.1.6 Irradiance Out of Range requirement.

    8.4. Unstable irradiance: Irradiance measurements shall be deemed stable if i) all individual sensor readings are within 10% of the average of all the sensor readings and ii) the average of all sensor readings is not more than 250 Watts per meter squared greater or less than the previous interval reading. If both conditions above are not met, the irradiance will be deemed unstable, flagged and the data will not be used in the test. This filter may be adjusted to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

    8.5. Inverter Clipping: Any intervals where the power output of one (or more) inverters is greater than 99.0% of the rated or programmed power limit. This data will be excluded from the test data.

    8.6. Meter Clipping: Any interval where the power output of the Revenue Meter is greater than 98.0% of the rated Electric Interconnection Point limit of the Project. This data will be excluded from the test data.

    8.7. Power Factor: Any intervals where the inverter power factor is less than ±0.95 will be excluded from the test data. This filter may be adjusted/removed to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

    8.8. Array shading by internal (array self-shading) or external (nearby objects). A schedule of expected shade times shall be defined in the Performance Test Procedures. This schedule may be altered during the Performance Test. Internal shading occurring during these shade intervals identified during testing shall be noted and considered as included in the design. Photographic evidence of array conditions shall be provided.

    8.9. Array shading by environmental conditions (e.g. frost, snow or debris). Onsite

observers shall record time intervals when such conditions exist as the Performance Test progresses. Photographic evidence of array conditions shall be provided and records occurring during these shade intervals identified during testing shall be marked as shaded and excluded from the test.

8.10. Wind Speed: Any intervals where average wind speed is greater than 15 meter per second, trackers go into a stow position or the panels are placed into hail stow due to a hailstorm will be excluded from the test data. This filter may be adjusted/removed to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

8.11. Any intervals impacted by system outages will be excluded from the test data including a) curtailment of the Project, b) shut down for maintenance, c) disconnection of the Project from the grid, d) power regulation by the grid operator, e) a Force Majeure Event, or f) any time when the Project is not (x) ninety percent (90%) available, if a Commissioning Performance Test, or (y) 100% available, if any other Performance Test.

9. Data will be collected until, at a minimum, the Minimum Data Points have been achieved.
10. Using the data filtering described herein, calculate the linear regression coefficients and Test Rated Power.
11. Only data from records where input parameters are valid and within specified limits shall be used in computing capacity estimates.
12. Calculate the Performance Test Ratio using the calculated Test Rated Power and appropriate Model Rated Power. For clarity, the Test Rated Power and Model Rated Power calculations are performed in accordance with ASTM E2848 guideline, however, all procedures outlined herein will take precedence over the ASTM E2848 guidelines.
13. Seller shall not apply test tolerances or measurement uncertainty to the test data or model results. Seller shall strive to minimize test tolerance and measurement uncertainty.
14. If the Performance Test Rating of the Project does not meet or exceed the Guaranteed Solar Capacity during the Commissioning Performance Test or the Annual Performance Test Guarantee during an Annual Performance Test, the Seller may re-conduct the test in accordance with Section 10.8(E) of the Agreement.

Restrictions and exclusions that prevent or inhibit performance or completion of a scheduled test, as outlined in this procedure (i.e. too low irradiance over the specified interval, too many excluded intervals) shall result in rescheduling of the applicable Performance Test.

The Performance Test Procedures provided by Seller to Buyer shall include (at a minimum) the following information:

- This test procedure
- Identification of key personnel and parties to be involved in the test
- The applicable Performance Test PVSYST Model
    - For the purposes of the Performance Test, the Annual Performance Test PVSYST Model shall include module/system Annual Degradation and assume 100% availability.
    - Meteorological data
- Identification of the Project under test (at a minimum)

  - Number and make/model of PV modules
  - Array orientation
  - Location (latitude, longitude, street address)
  - Racking type and tilt
  - Tracker range of motion (if applicable)
  - Number and make/model of Inverters
  - Row to row spacing (ground coverage ratio)
- Identification of all data points to be monitored during the test
- The starting and ending dates of the scheduled Performance Test Measurement Period.
- Table of all sensors and transducers to be used, including cut sheets, calibration records, map of sensor locations with sufficient detail to allow observers to locate the sensors and transducers. This includes sensors required for all applicable Input Parameters (MET station sensors, inverters, and Revenue Meter).
- Calibration records for all instrumentation, sensors, and transducers used for the test verifying that such calibration has been performed within twelve (12) months of the test or other such shorter period of time as may be recommended by the device manufacturer.
- All data identified in Appendix 2 to this Exhibit F.

Measured data is to be made available to the Buyer upon request during the Performance Test Measurement Period, for use in evaluating the progress of the Performance Test.

**Performance Test Report**
No later than fifteen (15) Business Days following the end of the Performance Test Measurement Period (as such may be repeated due to a re-test, if applicable), a Performance Test Report will be submitted to the Buyer by the Seller. Buyer shall have ten (10) Business Days to accept or reject the results of the Performance Test Report, and provide in writing any comments of Buyer on such Performance Test Report. In the event that Buyer rejects all or any part of the draft Performance Test Report, Seller shall, within five (5) Business Days thereafter address any comments of Buyer and re-submit the Performance Test Report to Buyer. This procedure shall continue until Buyer accepts the Performance Test Report. Any dispute regarding the results of the Performance Test or the Performance Test Report shall be resolved as indicated in the Agreement.

The Performance Test Report shall contain:

- The Performance Test Procedures, including all requirements as outlined herein.
- The actual start and end date/times of the Performance Test Measurement Period
- Parties present for the execution of the Performance Test
- Comments on environmental conditions during the Performance Test Measurement Period that affect the results of the test
- Performance model simulations, including all inputs, functional calculations and results
- Summary of test results
- Regression coefficients used to calculate Model Rated Power and Test Rated Power
- Comparison of test results with Annual Performance Test Guarantee.

All raw data used as input to the Performance Test shall be provided electronically (via CSV, XLS, or XLSX formats) to the Buyer with the Performance Test Report.

## Exhibit F - Appendix 1:
## Additional Requirements

### Sensor Requirements

Front plane of array irradiance sensors shall be at a minimum "High Quality" classified pyranometer(s) as defined in ASTM2848-A1.2 (Secondary Standard per ISO 9060). Pyranometers shall include device-specific characterization data that shall, at minimum, include cosine and temperature response. Alternative pyranometers may be used if necessary.

Pyranometers shall be used only within their valid calibration period and shall be cleaned at the start of the Performance Test Measurement Period and cleaned daily during the test if the Performance Test Measurement Period extends beyond one (1) week. Rear plane of array irradiance may be measured using either a high-quality reference cell (module) or a "High Quality" classified pyranometer(s) as defined in ASTM2848-A1.2 (Secondary Standard per ISO 9060).

| Measurement | Instrument Type | Test Function | Range | Accuracy |
|---|---|---|---|---|
| Plane of Array Irradiance | Front Facing Pyranometer Rear Facing Pyranometer | Primary for Performance Test | 0 to 1600 W/m$^2$ 285 to 2800 nm | ±2.0% daily |
| Global Horizontal Irradiance | Pyranometer | Tertiary for Performance Test | 0 to 1600 W/m$^2$ 285 to 2800 nm | ±2.0% daily |
| Ambient Air Temperature | Temperature Probe | Primary for Performance Test | -40°C to +60°C | ±1°C |
| Wind Speed | Sonic Wind Sensor | Primary for Performance Test | 0 – 60 m/s | ±5% |
| PV Plant Power | PV Power Revenue Meter | Primary for Performance Test | 0 to PV Power Plant size +20% | ANSI C-12.20 |
| Inverter Power | Inverter Meter | Primary for Performance Test | determined from inverter data sheet | determined from inverter data sheet |
| Soiling Loss | Soiling Stations<br><br>OR<br>In-Field IV Curve | Primary for Performance Test<br><br>Secondary for Performance Test | 0 to 100% | |

### Multiple Measurements

Multiple Measurements shall be recorded for all environmental data throughout the Site in order to capture the operating conditions for all regions of the array.

Below are the main sensors to be used in the Performance Test:

- Front and rear plane of array irradiance (POA): Plane of Array readings shall be averaged from sensors installed.
- Ambient Air Temperature: Ambient temperature readings shall be averaged from sensors installed.

- Wind Speed: wind speed sensors shall be averaged from sensors installed.
- Soiling Station: At least four soiling stations, averaged readings will be used for multiple stations.
- Albedometer: At least four albedometers, averaged readings will be used for multiple sensors.
- Inverter Meter: The power and power factor reading for each inverter.
- PV Plant Meter: The power reading of the Revenue Meter.

## Exhibit F - Appendix 2: Performance Test PVSYST Model and Reporting Conditions Definition

### Performance Test PVSYST Model

The requirements for the Performance Test PVSYST Model to be used for evaluating the Test Rated Power is detailed in this Exhibit F. This section outlines all input parameters required to create the PVSYST simulation, in the event that PVSYST electronic project files are no longer available. This section shall be populated and submitted with the Performance Test Procedures.

The Performance Test PVSYST Model and the post-processed 8760 generation forecast accounting for any losses outside of the model shall be included within this Exhibit F. Post-processed losses shall be specifically identified in the 8760 forecast.

For Annual Performance Tests, the Performance Test PVSYST Model will be updated to the Annual Performance Test PVSYST Model prior to running the Performance Test to include the Annual Degradation.

### PVSYST Model Files

Table 2-1 below provides the file names for all model files necessary to run the PVSYST simulation in the PVSYST version specified in the subsequent section. Seller shall provide all Annual Performance Test PVSYST Model files to the Buyer including all files required to recreate the PVSYST modeling files including .ond, .pan, .shd, .met, .prj and .vc files. The PVSYST version, report, and output 8760 based on the specified TMY Meteorological data source shall be provided.

Table 2-1: PVSYST File Names

| PVSYST File Type | File Name |
|---|---|
| Project | To be provided |
| Variant 1 | To be provided; aligns with primary module |
| Variant 2 | To be provided; aligns with secondary module |
| Site | To be provided |
| Meteorological | To be provided |
| Panel | To be provided |
| Inverter | To be provided |

### PVSYST Input Parameters

This section documents all PVSYST inputs and assumptions. Table 2-2 below provides many of the PVSYST inputs required in the simulation.

Sixty (60) Days prior to performance testing of any portion of the solar project, the corresponding PVSyst model and inputs with the resultant 8760 generation forecast shall be submitted with the test procedure for Buyer review. Testing and approval for Commercial Operation will require that a PVSyst model and associated inputs and results be provided that represents the capability to fulfill a minimum total annual generation of [*] GWh per year (as identified in Exhibit L) on a P50 probability basis as adjusted year over year for any applicable degradation.

Seller shall provide justification and supporting documentation for all of the circuit ohmic losses, inverter losses, transformer losses, and auxiliary loads identified in Table 2-2.

**Table 2-2: PVSYST Input Parameters**

| **Input Parameter** | **Value** | **Comment** |
|---|---|---|
| PVSYST Software Version | | |
| Transposition Model | | |
| Meteorological File | | |
| Latitude / Longitude | | |
| Altitude [m] | | |
| Array Orientation (PVSYST Field Type) | | |
| Tilt | | |
| Azimuth | | 0° is due South |
| Tracker Backtracking | | |
| Min / Max Rotation Angle | | |
| Number of sheds | | |
| Ground Cover Ratio (GCR) | | |
| Pitch [m] | | |
| Primary Module | | |
| Secondary Module | | |
| Collector width [m] | | |
| Primary Module | | |
| Secondary Module | | |
| Inactive band, Left (m) | | |
| Inactive band, Right (m) | | |
| Near Shading Type | | |
| Electrical Effect | | |
| Number of strings in row width | | |
| Horizon | | |
| Module Type | | |
| Primary Module | | x% primary module |
| Secondary Module | | y% secondary module |

| **Input Parameter** | **Value** | **Comment** |
|---|---|---|
| Qty. of modules | | |
| Primary Module | | |
| Secondary Module | | |
| Qty. of modules per string | | |
| Primary Module | | |
| Secondary Module | | |
| Qty. of parallel strings | | |
| Primary Module | | |
| Secondary Module | | |
| Inverter Type | | |
| Qty. of inverters | | |
| Inverter Loss | | |
| Heat Transfer: Constant loss factor | | |
| Heat Transfer: Wind loss factor | | |
| DC circuit ohmic loss at STC | | |
| Module Bifaciality Factor | | From datasheet (not PAN file) |
| Primary Module | | |
| Secondary Module | | |
| Module Quality | | |
| Primary Module | | |
| Secondary Module | | |
| Mismatch [%] | | |
| Primary Module | | |
| Secondary Module | | |
| LID – Light Induced Degradation [%] | | |
| Primary Module | | |
| Secondary Module | | |
| Soiling Loss [%] | | |
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |

| **Input Parameter** | **Value** | **Comment** |
|---|---|---|
| September | | |
| October | | |
| November | | |
| December | | |
| Annual Average | | |
| Incidence Angle Modifier Factors or ASHRAE b0 value | | |
| Rear Transparency | | |
| Primary Module | | |
| Secondary Module | | |
| Rear Shade Loss | | |
| Primary Module | | |
| Secondary Module | | |
| Rear Mismatch | | |
| Primary Module | | |
| Secondary Module | | |
| Module Mounting Height | | |
| Monthly Surface Albedo | | |
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |
| Annual Average | | |
| Auxiliary Loads [%] | | |
| Nighttime Loads [%] | | |
| AC circuit ohmic loss at STC [%] | | |
| AC circuit MV ohmic loss at STC | | |
| External MV Transformer No Load Loss [%] | | |
| External MV Transformer Full Load Loss [%] | | |

| Input Parameter | Value | Comment |
|---|---|---|
| AC circuit HV ohmic loss at STC | | |
| Terrain Loss [%] | | |
| External HV Transformer No Load Loss [%] | | |
| External HV Transformer Full Load Loss [%] | | |

**Additional Losses (Post-Processed Loss)**
There are multiple losses associated with an operating Project that may not be accounted for in PVSYST. Auxiliary load consumption shall be separately accounted for in the test results. Treatment of any additional adjustments impacting the Primary Metering Device in the event they impact the overall results of the test shall be as mutually agreed by the Parties.

**Reporting Conditions Identification**
The Reporting Conditions are to be specified based on the measured data set. The following procedure is recommended for identifying Reporting Conditions.

1. The Reporting Conditions shall be determined based on the measured data set. Data records shall include the measured Total Plane of Array irradiance ($E_{Total}$), ambient temperature and wind speed input parameters, as well as any auxiliary parameters necessary for marking data records according to the primary data exclusion criteria.
2. Apply the primary data exclusion criteria identified in Section 8 of this Exhibit F to the measured data records.
3. Grouping the remaining data records, compute the median values of $E_{total}$, ambient air temperature, and wind speed. The reporting condition for $E_{total}$ irradiance shall not be less than 500 W/m², unless otherwise agreed to by the Parties.
4. Round median $E_{total}$ irradiance to the nearest integer W/m², median temperature to the nearest °C, and median wind speed to the nearest 0.1 m/s. The calculated values represent the Reporting Conditions.

**Model Rated Power Identification**
The Model Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure shall be used by the Seller to calculate the Model Rated Power values.

1. To Calculate the Model Rated Power value, update and verify the applicable Performance Test PVSYST Model includes the following parameters:
   a. Availability and Curtailment Losses shall be assumed 0%
   b. Update soiling and albedo values
   c. Calculate Annual Degradation (for Annual Performance Tests)
2. The Performance Test PVSYST Model hourly output, after post-processing, must contain at a minimum the plane of array irradiance, the ambient temperature, wind speed, inverter

energy output, modeled power generation, shade loss, and clipping loss (GlobInc, Globbak, TAmb, WindVel, EOutInv, Egrid, POI Limited, ShdBLss, and IL Pmax) respectively. For clarity:

$$\text{Model } E_{total} = \text{GlobInc} + \text{Globbak}*BF$$

BF = Module Bifaciality Factor of the bifacial modules used in the Performance Test

3. Procure data records from the Performance Test PVSYST Model.
4. For Annual Performance Tests, adjust total generation output from the Performance Test PVSYST Model to account for the Annual Degradation by multiplying all positive generation intervals by one minus the Annual Degradation.
5. Apply the data exclusion criteria identified in Section 8 of this Exhibit F to the simulation data records.
6. Calculate the regression coefficients for the Performance Test Measurement Period from filtered data with a Total Plane of Array Irradiance within +/-30% of the Total Plane of Array Irradiance Reporting Condition.
7. Calculate Model Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation below:

$$P_{RC} = E_{RC}(a_1 + a_2 \cdot E_{RC} + a_3 \cdot T_{RC} + a_4 \cdot v_{RC})$$

Where:

$P_{RC}$ = Rated Power
$E_{RC}$ = Total Plane of Array Irradiance Reporting Condition
$T_{RC}$ = Temperature Reporting Condition
$v_{RC}$ = Wind Speed Reporting Condition
a1 to a4 = Regression coefficients

**Test Rated Power Identification**

The Test Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure will be used by the Seller to calculate the Test Rated Power values.

1. Procure measured data records including the meter output and inverter output data
2. Calculate the Test $E_{TOTAL}$

$$\text{Test } E_{total} = \text{GlobInc} + \text{Globbak}*BF*\text{RearShade}$$

3. Apply the data exclusion criteria identified in Section 8 of this Exhibit F to the measured data records.
4. Compute regression coefficients for the Performance Test Measurement Period.
5. Calculate the Test Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation.

**Exhibit F-Appendix 3: PVsyst – Simulation Report**

**[To be provided.]**

**EXHIBIT G-1**
(to Power Purchase Agreement)
**INSURANCE COVERAGES**

Seller shall obtain and maintain the following insurance coverages, at a minimum:

**A.** **Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B.** **Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

**C.** **Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

**D.** **Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E.** **Network Security and Privacy Liability**. Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

**F.** **Property Insurance**. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance in the amount of Two Hundred Million Dollars ($200,000,000). Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

**EXHIBIT G-2**
(to Power Purchase Agreement)

**FORM OF ATTESTATION AND BILL OF SALE**

Pursuant to WREGIS, _____ ("Seller") hereby sells, transfers and delivers to Buyer the RECs and Environmental Attributes associated with the generation of Energy at the Project, as detailed in the Power Purchase Agreement between the Parties dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

_____
Name of Renewable Energy Facility

| Fuel Type | Maximum Power Output (MW) | Operation Date |
|---|---|---|
| Dates | | MWh generated |
| _____, 20___ | | _____ |

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents as follows:

1. to the best of its knowledge, the information provided herein is true and correct;

2. its sale to Buyer is its one and only sale of the RECS and Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such RECS and Environmental Attributes;

3. the Project identified above produced the number of MWh above during the period indicated above;

4. Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and

5. Seller owns the _____.
Name of the Renewable Energy Facility

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the above referenced Energy.

Contact Person: _____
Phone: _____; Fax: _____

[Seller]

Signed: _____
Name: _____
Title: _____
Date: _____

**EXHIBIT H**
(to Power Purchase Agreement)

**AVAILABILITY GUARANTEE**

**Section 1. Definitions.**

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the PPA.

"**Actual Solar Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Solar Available Hours for all Solar Units that were part of the Project at the beginning of the relevant Commercial Operation Year for all Daylight Intervals, divided by (ii) the sum of all Solar Period Hours in the relevant Commercial Operation Year for all Solar Units that were part of the Project on the Commercial Operation Date.

"**Actual Solar Energy Output**" means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

"**Aggregate Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Report**" has the meaning set forth in Section 2(5) of this Exhibit.

"**Daylight Interval**" means each hour where plane of array irradiance conditions are 50 W/m2 or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

"**Guaranteed Solar Availability Percentage**" has the meaning set forth in Section 2(1) of this Exhibit.

"**Solar Availability Damages**" has the meaning set forth in Section 2(2) of this Exhibit H.

"**Solar Availability Guarantee**" means the guarantee set forth in Section 2(1) of this Exhibit H.

"**Solar Available Hours**" means for each Solar Unit, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Solar Period Hours in such Commercial Operation Year, minus (b) the aggregate Solar Unavailable Hours for such Solar Unit in such Commercial Operation Year, plus (c) the aggregate Solar Excused Hours for such Solar Unit in such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity of the Solar

Unit.

"**Solar Excused Hours**" means, in any Commercial Operation Year, the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity of the Solar Unit.

"**Solar Period Hours**" means the number of Daylight Intervals within any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

"**Solar Unavailable Hours**" means those hours a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; (c) included in Scheduled Maintenance Outages; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Energy to the Point of Delivery. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour a Solar Unit is unavailable, but for less than the full amount of its installed capacity, the Solar Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

**Section 2. Solar Availability Guarantee.**

1. Solar Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Availability Percentage (i) equal to or greater than eighty-five percent (85%) averaged through the second full Commercial Operation Year of the Term and (ii) equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date ("**Guaranteed Solar Availability Percentage**").

2. Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed Solar Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Guaranteed Solar Availability Percentage minus the Actual Solar Availability Percentage for such Commercial Operation Year (both expressed as a decimal), multiplied by (z) the Actual Solar Energy Output for such Commercial Operation Year divided by the Actual Solar Availability Percentage (expressed as a decimal), multiplied by the Guaranteed Solar Availability Percentage (expressed as a decimal) (the "**Solar Availability Damages**"), but in no event in excess of the Annual Solar Availability Damages Cap and the Aggregate Solar Availability Damages Cap. A sample calculation of the Solar Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Sixty Thousand Dollars ($60,000) per MW of Guaranteed Solar Capacity ("**Annual Solar Availability Damages Cap**") and in the aggregate at a value equivalent to One Hundred Fifty Thousand Dollars ($150,000) per MW of Guaranteed Solar Capacity ("**Aggregate Solar Availability Damages Cap**") over the Term of the PPA.

4. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed Solar Availability Percentage shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Section 12.1(B)(8) and (9) of the PPA, if and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail to meet the Guaranteed Solar Availability Percentage.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the PPA.

## ATTACHMENT 1 TO EXHIBIT H

## EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES

### I. Example of Actual Solar Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 50 Solar Units were part of the Project.

The Solar Units had the following operating characteristics:

| | | Hours | Solar Units Affected | Solar Unit Hours |
|---|---|---|---|---|
| | Solar Period Hours ("PH") | 4,000 | 50 | 200,000 |
| | Solar Unavailable Hours ("UH") | | | 5,000 |
| | Solar Excused Hours ("EH") | | | 1,000 |

Given these assumed facts, the Solar Available Hours for the Solar Units during the Commercial Operation Year would be calculated as follows:

Sum of Solar Available Hours = PH – (UH + EH): 196,000 = 200,000 – 5,000 + 1,000

**Actual Solar Energy Availability Percentage**

Given these assumed facts, the Actual Solar Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

(a) Sum of Solar Available Hours: 196,000 hours
(b) Sum of Solar Period Hours: 200,000 hours
(c) Actual Solar Availability Percentage: (Sum of Solar Available Hours/Sum of Solar Period Hours) x 100 = (196,000/200,000) x 100 = 98.0%

### II. Example of Availability Damages

(a) Example of Solar Availability Damages based on the following assumed facts:
(b) Seller's Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.
(c) Seller's Actual Solar Availability in Commercial Operation Year 4 = 85%.
(d) Solar Energy Output Payment Rate = $20.00
(e) Actual Solar Energy Output = 130,000 MWh

Given these assumed facts, Seller calculates the Solar Availability Damages due to Buyer as follows:

Solar Energy Output Payment Rate x (Guaranteed Solar Availability Percentage in Commercial Operation Year 4 — Actual Solar Availability Percentage for Commercial Operation Year 4 (each expressed as a decimal)) x (Actual Solar Energy Output for Commercial Operation Year 4 ÷ Actual Solar Availability Percentage for Commercial Operation Year 4 x Guaranteed Solar Availability Percentage for Commercial Operation Year 4 (the latter two expressed as a decimal)) = Solar Availability Damage:

$20.00 x (.90 - .85) x (130,000 ÷ .85 * .90) = $137,647.06

**EXHIBIT I**

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"),is made by [●] ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

**1.** **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder.

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and

enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty if a court of competent jurisdiction finally declares that amounts are due and payable hereunder (subject, in all instances other than reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees)), to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

**2. DEMANDS AND PAYMENT**.

(a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

(b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty.

(c) After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State Florida or the State of New York.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and

(c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be

limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4.** **RESERVATION OF CERTAIN DEFENSES.** Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**5.** **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6.** **WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with

respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

(d) Guarantor hereby waives any right to assert against Counterparty as a defense, counterclaim, set-off or crossclaim, any defense (legal or equitable), counterclaim, set-off, crossclaim and/or other claim which Guarantor may now or at any time hereafter have against Obligor or any other party liable to Counterparty in any way or manner. Guarantor further waives any right to assert against Counterparty any claim or defense based upon an election of remedies by Counterparty that impairs, releases or extinguishes Guarantor's subrogation rights or any other right to proceed against Obligor or against any other person or property.

**7.** **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

**8.** **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement, and (ii) 11:59:59 Eastern Prevailing Time of [[__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

**9.** **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

| *TO GUARANTOR: ** | *TO COUNTERPARTY:* |
|---|---|
| [●]<br>*Attn:* Treasurer | *Attn:* [●] |
| *[Tel:* [●] -- *for use in connection with courier deliveries]* | *[Tel:* [●]<br>-- *for use in connection with courier deliveries]* |

* (NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. [●] and ATTN: Credit Department, Fax No. [●]. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)

Any Notice given in accordance with this *Section 9* will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10.** **MISCELLANEOUS**.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and

understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) Counterparty and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the state and federal courts in Albuquerque, New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

(h) Delivery of an executed signature page of this Guaranty, and any subsequent amendment(s), by facsimile or email shall be effective as delivery of a manually executed counterpart hereof. The words "execute,", "execution,", "signed,", "signature," and words of similar import in this Guaranty shall be deemed to include electronic signatures or digital signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000,

the Electronic Signatures and Records Act of 1999, or any other similar state laws based on the Uniform Electronic Transactions Act.

**11.** **THIRD PARTY BENEFICIARY RIGHTS.** This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[●]
By: _____

Name: _____

Title: _____

**EXHIBIT J**
(to Power Purchase Agreement)

**COMMERCIAL OPERATION**
**FORM OF CERTIFICATION**

This certification ("**Certification**") of Commercial Operation is delivered by Star Light Energy Center, LLC ("**Seller**") to Public Service Company of New Mexico ("**Buyer**") in accordance with the terms of that certain Power Purchase Agreement dated June 6, 2025 ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Solar Units with an aggregate capacity of at least 100 MW have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed Capacity and punch list items that do not adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Solar Energy Output and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

| Star Light Energy Center, LLC | **[Licensed Professional Engineer]** |
|---|---|
| Signature: _____ | Signature: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| | Date: _____ |
| | License Number and LPE Stamp: _____ |

**EXHIBIT K**
(to Power Purchase Agreement)

## ANNUAL DEGRADATION GUARANTEES

| Test at Beginning of Commercial Operation Year | Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity) | Maximum % Degradation from Prior Year Actual Degradation |
|---|---|---|
| 1 - Commissioning Test | 100.00% | 0.00% |
| 2 | 99.50% | 0.50% |
| 3 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 0.50%) and 0.50% or (ii) 99.00% | 0.50% |
| 4 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 1.00%) and 0.50% or (ii) 98.50% | 0.50% |
| 5 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 1.50%) and 0.50% or (ii) 98.00% | 0.50% |
| 6 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 2.00%) and 0.50% or (ii) 97.50% | 0.50% |
| 7 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 2.50%) and 0.50% or (ii) 97.00% | 0.50% |
| 8 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 3.00%) and 0.50% or (ii) 96.50% | 0.50% |
| 9 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 3.50%) and 0.50% or (ii) 96.00% | 0.50% |
| 10 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 4.00%) and 0.50% or (ii) 95.50% | 0.50% |
| 11 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 4.50%) and 0.50% or (ii) 95.00% | 0.50% |
| 12 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation | 0.50% |

| | | |
|---|---|---|
| | (not to exceed 5.00%) and 0.50% or (ii) 94.50% | |
| 13 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 5.50%) and 0.50% or (ii) 94.00% | 0.50% |
| 14 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 6.00%) and 0.50% or (ii) 93.50% | 0.50% |
| 15 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 6.50%) and 0.50% or (ii) 93.00% | 0.50% |
| 16 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 7.00%) and 0.50% or (ii) 92.50% | 0.50% |
| 17 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 7.50%) and 0.50% or (ii) 92.00% | 0.50% |
| 18 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 8.00%) and 0.50% or (ii) 91.50% | 0.50% |
| 19 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 8.50%) and 0.50% or (ii) 91.00% | 0.50% |
| 20 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 9.00%) and 0.50% or (ii) 90.50% | 0.50% |

**EXHIBIT L**
(to Power Purchase Agreement)

**ANNUAL GENERATION FORECAST**

The following represents the annual P50 forecast of net, AC generation delivered to the Point of Delivery.

On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

| **Month** | **On-Peak Energy Delivered (MWh)** | **Off-Peak Energy Delivered (MWh)** |
|---|---|---|
| January | 12,108 | 1,667 |
| February | 15,492 | 2,963 |
| March | 23,951 | 4,853 |
| April | 21,645 | 3,722 |
| May | 24,098 | 4,951 |
| June | 25,026 | 5,555 |
| July | 24,344 | 4,847 |
| August | 24,835 | 4,661 |
| September | 20,282 | 4,010 |
| October | 21,129 | 3,119 |
| November | 13,158 | 3,266 |
| December | 8,973 | 1,173 |
| Total Annual | 235,042 | 44,788 |
| Total Combined Annual | 279,830 | |
| | | |
| Annual Capacity Factor | 31.9% | |

**EXHIBIT M**
(to Power Purchase Agreement)

**PPA FUNCTIONAL MAPPING**

The Project's NERC verified PPA Generator Owner, PPA Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

| | Entity Name | Point of Contact | E-mail | Phone |
|---|---|---|---|---|
| Generator Owner (GO) | | | | |
| Generator Operator (GOP) | | | | |
| Scheduling Coordinator Contact (SCC) | | | | |

**EXHIBIT N**
(to Power Purchase Agreement)

**EXAMPLE INTERCONNECTION METERING DIAGRAM**

*[To be provided.]*

# EXHIBIT O
(to Power Purchase Agreement)

## COMMISSIONING AND TESTING PROCESS

**Section 1. Purpose.**

This Exhibit O provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the PPA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Diagram as outlined in Exhibit N of the PPA and complete all testing as defined in Exhibit F of the PPA.

**Section 2. Identifying Key Points of Contact.**

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the PPA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

**TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.**

| CONTACT | Company | Group | Address | Project Role | Office Phone | Mobile Phone | E-MAIL |
|---|---|---|---|---|---|---|---|
| (name) | PNM | Generation Engineering | 2401 Aztec Rd NE Albuquerque, NM 87107 | Contract Manager | 505-241-XXXX | 505-241-XXXX | …@pnm.com |

The POC List shall identify, but not be limited to, the following:

**Buyer Team:** Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.
- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.
- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.
- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect ("**PCI**") modeling for functionality required for the participating resource schedule coordination ("**PRSC**") (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.
- Power Operations, "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

**Seller Team:** The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- Project Manager – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the generation systems. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.
- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.
- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:
    - Balancing Area Authority (BAA)
    - Transmission Owner (TO)
    - Transmission Operator (TOP)
    - Generator Owner (GO)
    - Generator Operator (GOP)

- Scheduling Coordinator (SC)
- Distribution System Operator (DSO)

**Section 3. Process Overview.**

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

**Section 3.1 Commissioning Kickoff Meeting.**

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A. This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

**Section 3.2 Pre-Commissioning.**

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

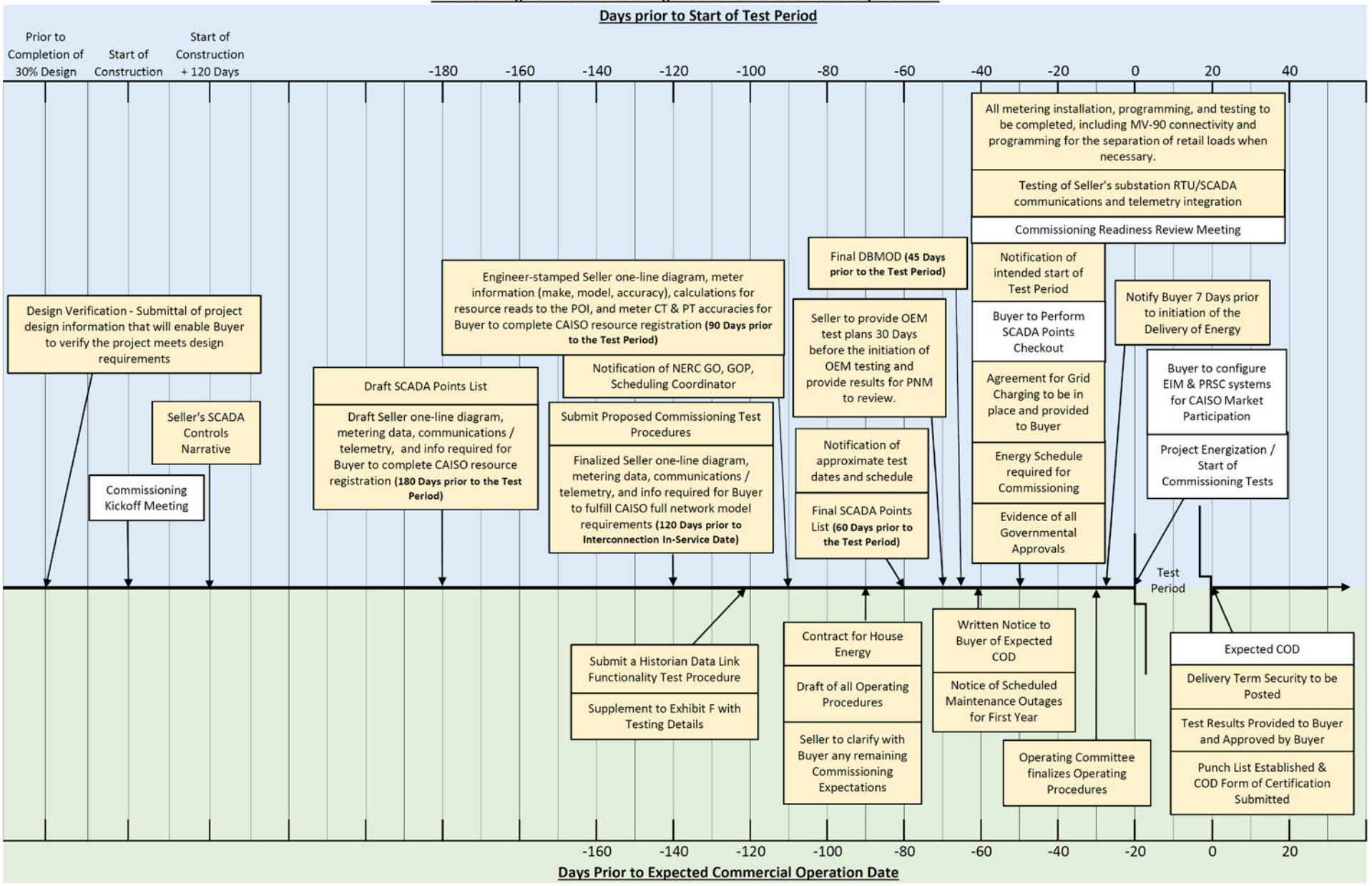
Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1 (Table 2 to prevail over any inconsistency with Figure 1):

## TABLE 2: PRE-COMMISSIONING REQUIREMENTS

| Requirement | Description | Responsible Party | Contributor(s) | Timeline |
|---|---|---|---|---|
| **Design Verification** | Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving PPA obligations, including metering, etc. | **Seller** | Generation Engineering | After completion of 30% design phase of project |
| **Seller's SCADA Controls Narrative** | Controls narrative detailing items related to SCADA and telemetry planning. | **Seller** | PowerOps | 120 Days after Start of Construction |
| | Final DB Mod file delivered to PowerOps. | **Seller** | PowerOps | 45 Days prior to the scheduled Test Period |
| **Seller's Substation Commissioning** | Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled generation resource performance testing. | **Seller** | Buyer's Project Manager | 30 Days prior to the scheduled Test Period |
| **Metering** | All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Diagram in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary. | **Seller** | PowerOps | 30 Days prior to the scheduled Test Period |
| **CAISO Resource Registration** | Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration. | **Seller** | PowerOps | 180 Days prior to the scheduled Test Period |
| | A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. Delays in Seller's submission to Buyer of this information will likely result in a delay in the transmission interconnection in-service date. | **Seller** | PowerOps | 120 Days prior to transmission interconnection in-service date |
| | PNM EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps. | **PowerOps** | Seller | |
| | Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter. | **Seller** | PowerOps | No later than 90 Days prior to the scheduled Test Period |
| **Power Operations Engineering Requirements for Commissioning** (Attachment 1) | This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. | **PowerOps** | Seller | SCADA Points Check Out: PowerOps will conduct a checkout 30 Days prior to the beginning of the scheduled Test Period. |
| **Power Operations & WPM Systems configuration** | EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent generation resources for CAISO market participation. | **PowerOps & WPM IT Support** | Seller | Prior to the beginning of the scheduled Test Period |
| **Operating Procedure** | Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering. | **Seller** | PowerOps | 90 Days prior to the Commercial Operation Date |
| | An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system. | **Seller/Buyer** | Seller / PowerOps / Generation Engineering | 30 Days prior to the Commercial Operation Date |
| **OEM Test Plan** | The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide Buyer with a certificate from an officer certifying that the testing required under the supply agreement with OEM was satisfactorily conducted. | **Seller** | Generation Engineering | All OEM related testing must be completed prior to declaring COD; Seller's officer certification may be included in the certification required by clause (g) of Commercial Operation. |

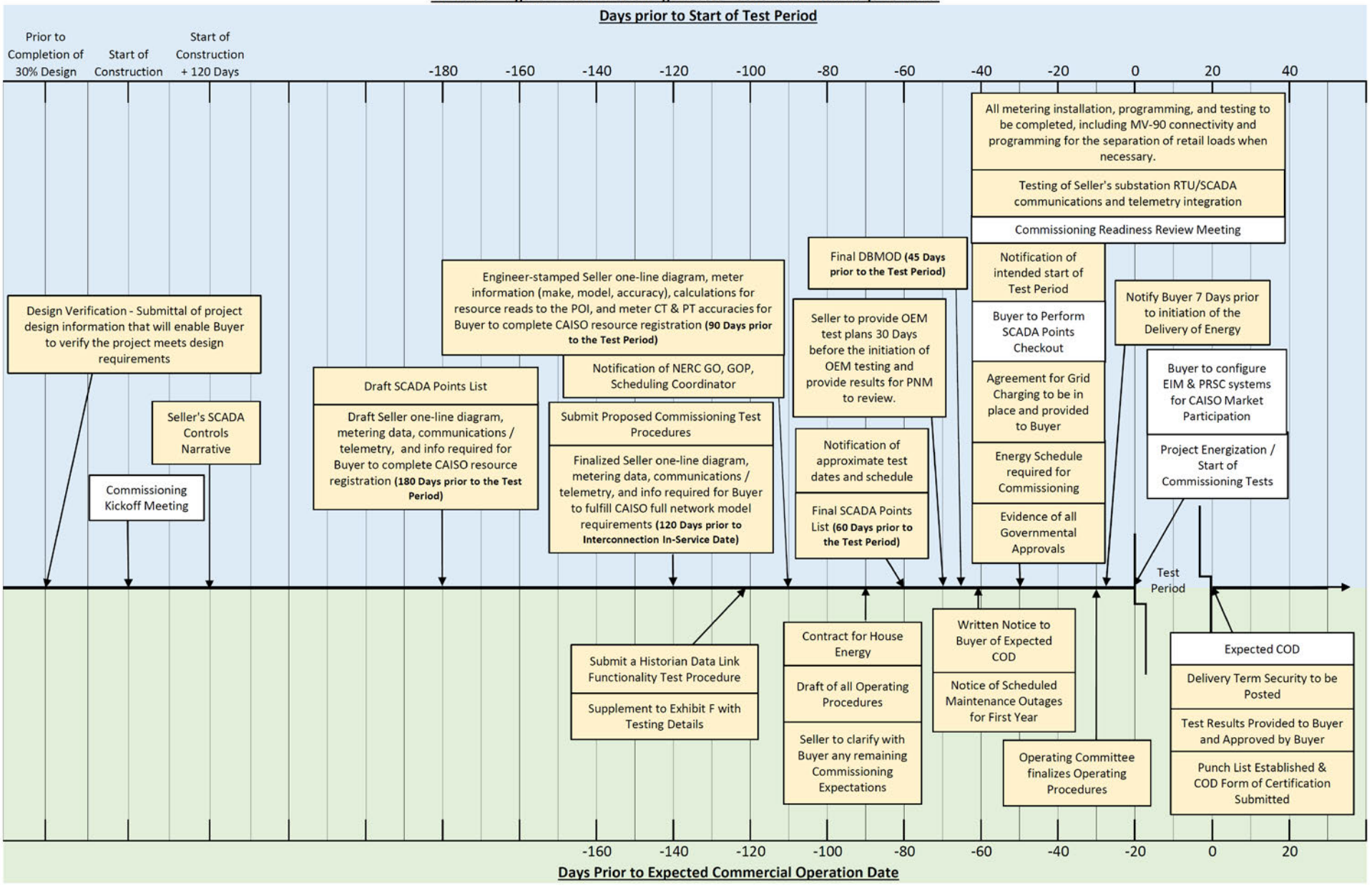
| Requirement | Description | Responsible Party | Contributor(s) | Timeline |
|---|---|---|---|---|
| **Test Energy Plan & Schedule** | Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated PPA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans. | **Seller** | Generation Engineering | Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period. |
| **Commissioning Readiness Review Meeting** | Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in:<br>Attachment 2: Commissioning Readiness Review | **Generation Engineering** | Seller, PowerOps | 30 Days prior to the beginning of the scheduled Test Period |

**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

**Section 3.3 Commissioning.**

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the PPA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.
- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Buyer Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the PPA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

For Seller's commissioning activities that require Buyer scheduling of energy delivery, Seller's failure to advise Buyer of any change to the planned timing of commissioning activities prior to 48 hours in advance of the change may result in an inability of Seller to conduct testing. Any such delay in commissioning activities as a result of late notification will be to Seller's account.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

**Section 3.4 Final Requirements Prior to COD.**

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

## ATTACHMENT 1 TO EXHIBIT O

## BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer 90 Days prior to the beginning of the Test Period:
    a. Nameplate values: MW, MWh, round trip efficiency, etc.
    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.
    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.
    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.
    d. Telemetry for Seller's substation awareness shall include:
        - [Generation side switches (89-xx1) & breakers (52-Fxx) status][1]
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - Generation resource total gross values and total net values (in both MW and MVAr)
                - Gross and net values shall be provided for each resource registered with CAISO
            - Point of Delivery values – MW, MVAr
            - AGC setpoints for generation resource and voltage setpoint. As well as the feedback for those setpoints.
            - Total real power target

[1] Seller NTD: Seller would not customarily have telemetry from the 89 switches.

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. DERMS Workbook inputs:
    a. Seller shall provide required information for the DERMS, including:
        - SCADA keys, resource characteristics, meteorology, etc.
        - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

## ATTACHMENT 2 TO EXHIBIT O

## COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. Confirmation that everything is in place to begin testing.
    a. The configuration of the system is stabilized.
    b. All planned preliminary, informal, functional, unit level, subsystem, system, and qualification tests have been conducted with satisfactory results.
    c. Any deficiencies detected in the system have been addressed.
5. The expected result and how might the test evaluation results affect the program.
6. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
7. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and operational testers prior to any test using personnel.
8. The fallback plan should a technical issue or potential showstopper arise during testing.
    a. The test director that will decide if an issue is a showstopper.
9. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

# EXHIBIT P

## FORM OF LENDER CONSENT

## CONSENT AND AGREEMENT

This Consent and Agreement (this "***Consent***") is made and entered into as of ___ _, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

## RECITALS

Star Light Energy Center, LLC ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of a photovoltaic solar electric energy generating facility owned by Seller and located in Valencia County, New Mexico (the "***Solar Project***").

Seller and Buyer have entered into that certain Power Purchase Agreement, dated as of June 6, 2025 (as amended, restated, supplemented or otherwise modified from time to time, the "***PPA***"), relating to the energy generated by the Solar Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the PPA (the "***Pledged PPA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

## AGREEMENTS

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged PPA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged PPA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of solar energy facilities of comparable size to the Solar Project and the ability perform all aspects of the PPA; (d) has agreed in writing to be bound by the PPA and to assume all of Seller's obligations under the PPA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged PPA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller

meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of and after the date of assignment, the Facility Development Security Amount or the Operational Security, as applicable, and (iii) Buyer has not terminated this PPA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged PPA (a "*Subsequent Seller*"), may be substituted for Seller under the PPA and Buyer shall recognize such Subsequent Seller as its counterparty under the PPA and, subject to all rights and remedies of Buyer under the PPA, continue to perform its obligations under the PPA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the PPA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the PPA. The transfer of the PPA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the PPA, Lender may cure such default by the deadline provided therefor in the PPA. Buyer will not terminate the PPA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the PPA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the PPA, (b) with respect to a default under Section 12.1(B)(8) or 22.21(A),(B),(C) or (E) of the Agreement, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the PPA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the PPA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the PPA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Solar Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. PPA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the PPA; provided that notwithstanding the foregoing, Buyer may terminate the PPA without Lender consent due to an

uncured Event of Default under the PPA after the expiration of Lender's rights to cure under Section 4 hereof.

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the PPA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the PPA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA.

8. Replacement Agreement. If the PPA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the PPA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the PPA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the PPA (other than the bankruptcy of Seller or a transfer of the Solar

Project to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 9.2 (Seller Permitted Assignment) of the PPA).

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS

BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the PPA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the PPA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

**[BUYER]**

By: _____
Name:_____
Title:_____

**[LENDER]**

By _____
Its _____

ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the PPA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the PPA, as and when required under the PPA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the PPA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the PPA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the PPA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the PPA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the PPA. Seller shall have no rights against Buyer, under the PPA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

## EXHIBIT Q

### Form of Estoppel Certificate

### ESTOPPEL CERTIFICATE

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Power Purchase Agreement, dated as of _____ (the "***PPA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a solar energy generating facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the PPA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the PPA have been duly authorized by all necessary action on the part of Buyer, (ii) the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the PPA, Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

[BUYER]

By: _____
Name:_____
Title:_____

Windy Lane Solar Facility Purchase Power Agreement

# PNM Exhibit GBB-4

Is contained in the following 167 pages.

# POWER PURCHASE AGREEMENT

# WINDY LANE SOLAR FACILITY

**by and between**

# PUBLIC SERVICE COMPANY OF NEW MEXICO

**and**

**WINDY LANE ENERGY CENTER, LLC**

**Dated as of June 6, 2025**

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# POWER PURCHASE AGREEMENT—SOLAR FACILITY

This Power Purchase Agreement—Solar Facility, as may be amended from time to time, is entered into this 6th Day of June, 2025 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Windy Lane Energy Center, LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 700 Universe Blvd, Juno Beach, FL 33408. Buyer and Seller may be referred to in this PPA individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission; and

WHEREAS, Seller desires to develop, design, construct, own and operate a solar energy electric generating facility with an expected total maximum power output of approximately 90 $MW_{AC}$ ("**Project**"), as further defined herein and in Exhibit A; and

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (as amended from time to time, "**Special Service Contract**"), between Buyer and Greater Kudu LLC ("**Retail Customer**"), as amended from time to time, Buyer has agreed, by entering into this PPA, to procure the Energy from the Project to serve Retail Customer's load; and

WHEREAS, Seller desires to generate, sell and deliver to Buyer the Energy generated by the Project and any and all associated or correlative Renewable Energy Certificates and other Environmental Attributes, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this PPA; and

WHEREAS, Buyer and Seller intend to enter into a certain Energy Storage Agreement, pursuant to which some of the Energy shall be exclusively used in Seller's Energy Storage System, and for which Buyer shall purchase the Energy Storage Product,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

## ARTICLE 1
## Definitions and Rules of Interpretation

1.1 Definitions. The following terms have the meanings set forth herein.

"**Abandonment**" means (a) prior to the Commercial Operation Date, a cessation of work and operations at or in respect of the Project for more than one hundred eighty (180) consecutive Days by Seller or Seller's contractors but only if such cessation is not in accordance with Prudent Utility Practices, caused by a Force Majeure Event, caused by a Buyer Event of Default, or is not in accordance with Seller's Project Schedule, or (b) after the Commercial Operation Date, the permanent relinquishment of possession and control of the Project (or any material portion thereof)

by Seller, other than a transfer permitted under this PPA.

"**AC**" means alternating electric current.

"**Accounting Standards**" has the meaning set forth in Section 22.18.

"**Additional Consents**" means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this PPA that are required from any Governmental Authority with respect to the Project.

"**AD/CVD**" means antidumping and/or countervailing duty.

"**Adjustment Cutoff Date**" means (i) for an Eligible Change in Tariff, the beginning of the Test Period, and (ii) for a Section 45(b) Rate Adjustment, the Expected Commercial Operation Date as may be extended under Section 3.6.

"**Affiliate**" of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity, excluding any Tax Equity Investor. For purposes of this definition, the term "control" (including the terms "controls," "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include NEP, NEOP, NEECH, NEER, and NEE, and their respective direct or indirect subsidiaries.

"**After Tax Basis**" means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment ("**Base Payment**") supplemented by a further payment ("**Additional Payment**") to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

"**AGC**" stands for "Automatic Generation Control" and means energy management system equipment that automatically adjusts the generation quantity of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

"**Aggregate Annual Solar Capacity Guarantee Damages Cap**" has the meaning set forth in Section 10.9(E).

"**Ancillary Services**" means operating reserves, frequency regulation, reactive supply, voltage control, frequency response, contingency reserves, and other products associated with electric generation and Energy, each to the extent that the Project is capable of providing such services in its then-current configuration, and all other beneficial outputs of the Project not required for the operation of the Project.

**"Annual Generation Forecast"** means the forecasts of generation from the Project set forth on Exhibit L.

"**Annual Performance Test**" has the meaning set forth in Section 10.8(B).

"**Annual Performance Test Guarantee**" has the meaning set forth in Section 10.9(A).

"**Annual Performance Test Guarantee Damages**" has the meaning set forth in Section 10.9(C).

"**Annual Performance Test Guarantee Ratio**" has the meaning set forth in Section 10.9(A).

"**Annual Performance Test PVSYST Model**" has the meaning set forth in Section 10.8(D)(8).

"**Annual Solar Capacity Guarantee Damages Cap**" has the meaning set forth in Section 10.9(E).

"**Anything of Value**" includes, but is not limited to, cash or a cash equivalent (including "grease," "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

"**Applicable Law**" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, applicable to this PPA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"**Attestation and Bill of Sale**" has the meaning set forth in Section 9.1(C).

"**Back-Up Metering**" has the meaning set forth in Section 5.3(A).

"**Balancing Area**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Balancing Area Authority**" or "**BAA**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

"**Business Day**" means any Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

"**Buyer**" has the meaning set forth in the Preamble, and acts herein in its merchant function capacity.

"**Buyer Costs**" means (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or entering into new arrangements which replace this PPA; and (b) all reasonable attorneys' fees and expenses incurred by Buyer in connection with the termination of this PPA, to the extent such items in (a) and (b) are not already included in Replacement Energy Costs.

"**Buyer-Requested Performance Tests**" has the meaning set forth in Section 10.10.

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement Energy Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value; provided that if (b)(i) is less than (b)(ii), then zero, plus (c) any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs, Environmental Attributes and any Future Environmental Attributes that are currently available pursuant to this PPA as of the date of termination of this PPA, Seller acknowledging that Buyer entered into this PPA for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes and any Future Environmental Attributes; plus (d) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. For termination occurring before the Commercial Operation Date, the Buyer Termination Payment shall not exceed the Development Security, minus any Delay Damages paid.

"**CAISO**" means the California Independent System Operator, or any successor thereto.

"**CAISO EIM**" means the energy imbalance market operated by CAISO, or any successor thereto.

"**Capacity Shortfall Damages**" has the meaning set forth in Section 3.8.

"**Change in Law**" means the occurrence, after the Execution Date, of any of the following: (a) the adoption or taking effect of any law, tax law, rule, regulation, order or treaty; (b) any repeal of or other change in any law, tax law, rule, regulation, order or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"**Change of Control**" means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller; provided, in calculating ownership percentages for all purposes of the foregoing:

(A) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity or voting interests in each such intermediate entity; and

(B) ownership interests in Seller owned directly or indirectly by any Lender (including any Tax Equity Investor) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, a Change of Control will not include any direct or indirect transfer of the interests in Seller to NEP; provided that following such transfer the entity that operates the Project is (or contracts with) a Qualified Operator.

"**Commercial Operation**" means when the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis (in accordance with Prudent Utility Practices) without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) all Seller required permits, required consents and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect, (c) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for the interconnection and delivery of Energy to the Point of Delivery in an amount at least equivalent to the Guaranteed Solar Capacity and is not in material breach of its Interconnection Agreement, (d) Seller has satisfactorily completed all of the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures (e) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement, (f) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this PPA, and (g) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

"**Commercial Operation Date**" means the date, determined in accordance with Section 3.10, on which all of the following have occurred: (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10; (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation Notice**" has the meaning set forth in Section 3.10.

"**Commercial Operation Year**" means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

"**Commissioning Kickoff Meeting**" has the meaning set forth in Section 3.1 of Exhibit O.

"**Commissioning Performance Test**" has the meaning set forth in Section 10.8(A) with such test detailed in Exhibit F and required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

"**Commissioning Readiness Review Meeting**" has the meaning set forth in Exhibit O.

"**Commissioning Tests**" has the meaning set forth in Section 10.2 as further defined in Exhibit F.

"**Compensable Curtailment**" means any curtailment of the Project, except for a Reliability Curtailment, to the extent such curtailment during a Commercial Operation Year has exceeded five percent (5%) of the Annual Generation Forecast for the same Commercial Operation Year.

"**Confidential Information**" has the meaning set forth in Section 22.14(C).

"**Contract Value**" means the sum of the present values of the payments for Solar Energy Output, for each Commercial Operation Year (or portion thereof) in the then-remaining term, (determined without reference to the early termination), which annual amount is equal to (a) the quantity of Metered Output and RECs expected to be produced during such Commercial Operation Year (or portion thereof) *times* (b) the Solar Energy Output Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Counteracting Savings Notice**" has the meaning set forth in Section 3.12(D).

"**Creditworthy**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**CTs**" has the meaning set forth in Section 5.3(A).

"**Data Breach**" has the meaning set forth in Section 22.14(F).

"**Day**" means a calendar day and includes Saturdays, Sundays, and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day

thereafter.

"**DC**" means direct current.

"**Deemed Energy**" has the meaning set forth in Section 4.1(A).

"**Default Rate**" has the meaning set forth in Section 9.4.

"**Defaulting Party**" means the Party with respect to which an Event of Default under Article 12 has occurred.

"**Delay Damages**" has the meaning set forth in Section 3.7.

"**Delayed Capacity**" has the meaning set forth in Section 3.7.

"**Delivery Term**" has the meaning set forth in Section 7.1.

"**Delivery Term Security**" has the meaning set forth in Section 19.1.

"**Development Security**" has the meaning set forth in Section 19.1.

"**Disclosing Party**" has the meaning set forth in Section 22.14(A).

"**Dispute Notice**" has the meaning set forth in Section 13.8.

"**Disputing Party**" has the meaning set forth in Section 9.5(A).

"**Dollars**" means the lawful currency of the United States of America.

"**Downgrade Event**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is not as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Early Termination Date**" has the meaning set forth in Section 12.4.

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission System as set forth in Appendix A of the Interconnection Agreement.

"**Electric Metering Device(s)**" means all metering and data processing equipment used to measure, record, or transmit data relating to the Solar Energy Output generated by the Project. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering including the metering current transformers and the metering voltage transformers.

"**Eligible Change in Tariff**" means any change in Applicable Law, new interpretation of existing Applicable Law or action by a Governmental Authority that (a) imposes on Seller or Seller's Affiliates with respect to the importation of Imported Equipment into the United States any duty (including AD/CVD), tariff, import tax, or other similar import fee or cost that becomes

effective after, or the enforcement of which commences after, the Threshold Date, or (b) increases the applicable rate of any of the foregoing which becomes effective after the Threshold Date, to the extent affecting Imported Equipment.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any Transmission Provider's Transmission System condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller's breach of its Interconnection Agreement with the Transmission Provider.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, generated by the Project and delivered to Buyer at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices, net of auxiliary loads, station electrical uses, and appropriate line losses.

"**Energy Shortfall**" has the meaning set forth in Section 10.9(B).

"**Energy Storage Agreement**" means that certain Energy Storage Agreement between Windy Lane Energy Center, LLC and Buyer dated as of June 6, 2025.

"**Energy Storage Product**" has the meaning ascribed to the term "Product" in the Energy Storage Agreement.

"**Energy Storage System**" or "**ESS**" has the meaning ascribed to it in the Energy Storage Agreement. The Energy Storage System is being developed concurrently and jointly with the Project and may share certain equipment, buildings, and facilities, including transformers, Interconnection Facilities, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate, with the Project.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include (A) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States Environmental Protection Agency or other governmental agencies, (B) any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the

Clean Air Act, (C) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, (D) credits, benefits or allowances resulting from the compliance of the Project or Project Energy with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "**UNFCCC**") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes include all RECs, any and all aspects of a REC, and the exclusive right to claim the additionality, or "but for cause", of such Projects' development and commercial operation, (E) all WREGIS Certificates as defined by the WREGIS Operating Rules and (F) those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project's generation of electricity. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; (iii) any Energy, reliability, or other power attributes from the Project, (iv) matters designated by Buyer as sources of liability, and (v) any adverse wildlife or environmental impacts.

"**Environmental Contamination**" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this PPA.

"**Event of Default**" means a Seller Event of Default as set forth in Section 12.1 or a Buyer Event of Default as set forth in Section 12.2, each after the passage of applicable notice and cure periods, if any.

"**Excused Delay**" means any of the following: (a) Force Majeure, (b) Interconnection Delay, or (c) an Import Restraint, as provided in Section 3.12, to the extent in each case (i) not caused by an act or omission of Seller, (ii) occurring despite Seller's exercise of Prudent Utility Practices, (iii) not reasonably foreseeable, and (iv) beyond the reasonable control of, and not caused by the negligence or lack of due diligence of, Seller or its contractors or suppliers.

"**Execution Date**" has the meaning set forth in the Preamble.

"**Expected Commercial Operation Date**" has the meaning set forth in Section 3.1.

"**Express Contingency Notice**" has the meaning set forth in Section 3.12.

"**Express Contingency Termination Payment**" means a termination amount equal to (i) one million dollars ($1,000,000) for a termination occurring pursuant to an Express Contingency Notice given on or before August 31, 2025 (regardless of when such termination occurs), or (ii) thirty-seven and one-half percent (37.5%) of the Development Security for a termination occurring pursuant to an Express Contingency Notice given at any other time.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**Fitch**" shall mean Fitch Ratings Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

"**Force Majeure Event**" has the meaning set forth in Section 14.1(A).

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on the Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date.

"**GAAP**" has the meaning set forth in Section 22.18.

"**Government Official**" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

"**Governmental Approval**" means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of renewable energy and Renewable Energy Certificates and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation with regard to any Non-Governmental Compliance Obligations.

"**Governmental Authority**" means any applicable federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"**Governmental Charges**" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority, including local, state or federal regulatory or taxing authorities

that would affect the sale and purchase of Solar Energy Output contemplated by this PPA, either directly or indirectly.

"**Gross Receipts Taxes**" means any New Mexico state and local sales taxes, gross receipts taxes and similar taxes and charges.

"**Guaranteed Solar Capacity**" has the meaning set forth in Section 3.1.

"**Guaranteed Start Date**" has the meaning set forth in Section 3.1.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" has the meaning set forth in Section 1.4.

"**Imported Equipment**" means solar photovoltaic cells, photovoltaic modules, inverters, step-up transformers, and structures (including towers and racking) intended to be imported into the United States from foreign destinations for the Project.

"**Import Restraint**" means any withhold release order or other law, rule, or regulation, including the Uyghur Forced Labor Prevention Act, or any action of a Governmental Authority under any such order, law, rule, or regulation, that imposes additional waiting time for Seller to receive Imported Equipment from foreign destinations, or prevents or delays the import or release of any Imported Equipment into the United States.

"**Installed Solar Capacity**" means, as of a given point in time, the aggregate nameplate capacity of all Solar Units installed and commissioned at the Project.

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended from time to time.

**"Interconnection Delay"** means the Transmission Provider's delay of the In-Service Date (as defined in the Interconnection Agreement) beyond the schedule set forth in the Interconnection Agreement in completing construction of the Interconnection Facilities or upgrades to the

Transmission Provider's Transmission System related to, and required pursuant to the Interconnection Agreement for, the interconnection of the Project, but only to the extent that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, including Seller's failure to complete its obligations under the Interconnection Agreement as needed to ensure timely completion and operation of such Interconnection Facilities.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities as defined and set forth in the Interconnection Agreement.

"**Internal Revenue Code**" means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

"**Issuer Minimum Requirements**" has the meaning set forth in Section 19.2.

"**ITC(s)**" means the investment tax credits established pursuant to Section 48 or Section 48E of the Internal Revenue Code, as such law may be amended or superseded (in whole or in part) from time to time, measured in Dollars.

"**kW**" means one or more kilowatts AC of electricity, as the context requires.

"**kWh**" means kilowatt hour AC.

"**Lender(s)**" means any and all Persons other than an Affiliate of Seller: (a) lending money or extending credit (including any financing lease, monetization of tax benefits, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or to an Affiliate of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) for any capital improvement or replacement related to the Project; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

"**Letter of Credit**" means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

"**Licensed Professional Engineer**" means an independent, professional engineer that is reasonably acceptable to Buyer, licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

"**Local Provider**" has the meaning set forth in Section 1.4.

"**Losses**" has the meaning set forth in Section 20.1(A).

"**Market Event**" has the meaning set forth in Section 22.22.

"**Market Operator**" means (a) CAISO in its capacity as operator of EIM, (b) the operator of the BAA or any other entity performing the market operator function for the BAA, or (c) the operator of any organized day-ahead or intra-hour market for a region that includes the Transmission Provider's Transmission System.

"**Metered Output**" means the Energy made available from the Project at the Point of Delivery, as measured by the Electric Metering Devices and adjusted for any losses, based on methodology formulated in accordance with Prudent Utility Practices and approved by PNM in its commercially reasonable discretion, between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Model Rated Power**" has the meaning set forth in Section 10.8(D)(6).

"**Month**" means a calendar month.

"**Monthly Billing Period**" means the period during any particular Month in which Solar Energy Output has been generated by Seller for Buyer and delivered to the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.12.

"**Moody's**" means Moody's Investor Services, Inc. and any successor thereto.

"**Mountain Standard Time**" or "**MST**" means the time that is seven (7) hours behind Coordinated Universal Time (UTC).

"**MPT Failure**" means any failure in the Project's main power transformer or high voltage breakers (a) requiring (x) at least a thirty (30) day outage, and (y) any of (i) replacement of the main power transformer or high voltage breakers, (ii) shipment of the main power transformer or major component thereof, or high voltage breakers or major component thereof, to the manufacturer for repair, or (iii) the on-site repair of the main power transformer or major component thereof, or high voltage breakers or major component thereof, and (b) that is not caused directly or indirectly by Seller's failure to comply with Prudent Utility Practices or Applicable Law or otherwise by the dalliance, delay, lack of prudently maintained spare parts, fault or negligence of or by Seller.

"**Munitions List**" means any list of articles, services or technology designated as defense or military articles, technologies, software or services by any relevant Government Authority, including items listed on the United States Munitions List and/or the Common Military List of the European Union.

"**MW**" means megawatt or one thousand (1,000) kW AC.

"**MWh**" means megawatt hours AC.

"**NEE**" means NextEra Energy, Inc., a Delaware corporation.

"**NEECH**" means NextEra Energy Capital Holdings, Inc., a Delaware corporation.

"**NEER**" means NextEra Energy Resources, LLC, a Delaware limited liability company.

"**NEOP**" means XPLR Infrastructure Operating Partners, LP (f/k/a NextEra Energy Operating Partners, LP), a Delaware limited partnership.

"**NEP**" means XPLR Infrastructure, LP (f/k/a NextEra Energy Partners, LP), a Delaware limited partnership.

"**NERC**" means the North American Electric Reliability Corporation or any successor organization.

"**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in Section 17.3(B).

"**Non-Defaulting Party**" means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

"**Non-Governmental Compliance Obligations**" means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, and self-regulatory organizations to which the Party is required to have membership and/or submit to jurisdiction in the performance of this PPA.

"**O&M Records**" has the meaning set forth in Section 13.4(A).

"**OATT**" means Open Access Transmission Tariff.

"**Operating Parameters**" has the meaning set forth in Section 10.4(A).

"**Operating Procedures**" means those procedures developed pursuant to Section 10.5.

"**Operating Records**" means all operating logs, blueprints for construction, operating manuals, all warranties on equipment, material engineering drawings, environmental permits, plans, and all documents, including but not limited to supply contracts, studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project. Seller may redact from Operating Records information that Seller reasonably deems commercially sensitive, so long as such redaction does not result in a non-performance by Seller of any of its obligations under this PPA, including audits under Section 22.18 or required to verify Seller's compliance with this PPA and its representations and warranties in Section 15.1, Guaranteed Solar Availability Percentage, and billing and payments.

"**Outage Notice**" has the meaning set forth in Section 7.5(A).

"**Other Resources**" means the generating facilities (i) located behind the Point of Delivery, and (ii) operational as of the Execution Date.

"**Other Resource Output**" means energy generated by the Other Resources.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

"**Performance Test Ratio**" has the meaning set forth in Section 10.8(D)(4).

"**Performance Test Report**" has the meaning set forth in Section 10.8(G).

"**Performance Tests**" has the meaning set forth in Section 10.8.

"**Person**" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**Point of Contact List**" or "**POC List**" has the meaning set forth in Section 2 of Exhibit O.

"**Point of Delivery**" means the electric system point at which Seller makes available to Buyer and delivers to Buyer or accounts for the Solar Energy Output being provided by Seller to Buyer under this PPA. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this PPA. Energy delivered from the Project to the Energy Storage System shall be adjusted for losses to the Point of Delivery and shall be deemed to have been delivered at the Point of Delivery.

"**PPA**" or "**Power Purchase Agreement**" means this Power Purchase Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"**Primary Metering Device(s)**" means the Electric Metering Device used as the primary basis to measure, record, or transmit data relating to the Metered Output associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

"**Project**" means Seller's solar energy generation facility with a nameplate capacity of 90 MW at the Point of Delivery located in De Baca County, New Mexico which will produce the Solar Energy Output made available to Buyer under this PPA, including one or more of Seller's Solar Units and Seller's Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this PPA, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this PPA.

"**Project Manager**" has the meaning set forth in Section 10.1(D).

"**Project Schedule**" has the meaning set forth in Section 3.2.

"**Projected Schedule**" has the meaning set forth in Section 7.4(A).

"**Promotional Materials**" has the meaning set forth in Section 22.15.

"**Prudent Utility Practice(s)**" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available when needed and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating requirements of the Interconnection Agreement, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for solar power generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance

with applicable permit and regulatory requirements.

"**PTC(s)**" means the production tax credits established pursuant to Section 45 or Section 45Y of the Internal Revenue Code, as such law may be amended or superseded (in whole or in part) from time to time, measured in Dollars.

"**PTs**" has the meaning set forth in Section 5.3(A).

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating at least three hundred (300) MW of solar generation and that is trained on the functionality and operation of the solar generation technology, or (b) any other Person reasonably acceptable to Buyer.

"**RC**" has the meaning set forth in Section 10.8(D)(1).

"**Receiving Party**" has the meaning set forth in Section 22.14(A).

"**Receiving Party's Representatives**" has the meaning set forth in Section 22.14(B).

"**Recording**" has the meaning set forth in Section 22.19.

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Reliability Curtailment**" means any curtailment of the Project (a) that is ordered by the Market Operator, BAA or Transmission Provider, (b) by Seller for an Emergency Condition or safety or equipment failure situations, or (c) except that it shall also be a Reliability Curtailment for an oversupply position only where resources are contributing to an excess position of 50 MW or more in relation to PNM's jurisdictional utility load and the Market Operator cannot either manage such oversupply through market operations or export such oversupply due to NERC generation control performance standards (including BAL-001-2), which curtailment shall be done in an equitable and non-discriminatory manner and consider available energy storage resources associated with Retail Customer. Buyer will, upon reasonable notice, provide Seller reasonable documentation relating to any curtailment Buyer considers Reliability Curtailment.

"**Renewable Energy Certificate**" or "**REC**" means a WREGIS Certificate and all Environmental Attributes associated with the generated energy. Seller must deliver RECs that are compliant with the requirements of the New Mexico Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended.

"**Replacement Energy Costs**" means the costs to Buyer reasonable and necessary to replace Solar Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein and based upon similar terms, conditions and performance standards outlined in this PPA) which Seller, in accordance with this PPA, was obligated to deliver to Buyer but failed to. Buyer shall not have to enter into a replacement contract to establish the Replacement

Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs) and Ancillary Services delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Solar Energy Output to the Point of Delivery and any associated transmission costs, (b) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (c) Buyer's expenses, including reasonable attorneys' fees, suffered as a result of Seller's failure to perform under this PPA.

**"Report Review Period"** means a period ending fifteen Business Days following delivery by the Technical Expert of its final report.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**Retail Customer"** has the meaning set forth in the Recitals.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community, or His Majesty's Treasury.

"**Scheduled Maintenance Outage**" means a time during which a Solar Unit is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" or "**SCC**" has the meaning set forth in Section 3.9.

"**Scope Reporting Rule**" means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 C.F.R. § 229.1500, et seq., as amended from time to time, and, to the extent Buyer or Retail Customer voluntarily elects in its sole discretion to comply therewith, as proposed, or, following the effectiveness thereof, in the final rule form thereof despite being stayed or vacated by appealable judicial action and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Subscriber voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

"**SEC**" has the meaning set forth in Section 22.18.

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Section 45(b) Rate Adjustment**" means any Change in Law that repeals, in whole or in part, the Inflation Reduction Act of 2022, or changes any regulations or administrative guidance implementing the Inflation Reduction Act, in a manner that prevents or limits Seller from claiming or monetizing any PTC.

"**Security**" means Development Security or Delivery Term Security, as applicable.

"**Seller**" has the meaning set forth in the Preamble.

"**Seller Excused Hours**" means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Scheduled Maintenance Outage, (b) a curtailment of the Project, (c) a Force Majeure Event, or (d) any failure by Buyer to receive Energy at the Point of Delivery.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Project to the Point of Delivery not associated with Seller Excused Hours.

"**Seller Guarantor**" means (i) NEECH, or (ii) a Creditworthy entity that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Parties**" means the following persons or entities connected to the Seller providing services in connection with this Agreement: Affiliates, all entities that it owns or controls, and all of Seller's owners (including Seller's Parent Entity), directors, officers, employees, representatives, and agents.

"**Seller Permitted Transfer**" means:

(1) during periods when NEER or its Affiliate is the direct or indirect owner of more than fifty percent (50%) of the direct or indirect equity and voting interests of Seller (which are not otherwise held by Tax Equity Investors in connection with a Tax Equity Financing), any of the following: (a) a Change of Control of Seller's Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor in connection with a Tax Equity Financing; or (c) a transfer of (i) all or substantially all of the assets of NEER or Seller's Ultimate Parent in a single transaction, (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction, or (iii) all or substantially all of NEER's or Seller's Ultimate Parent's solar generation portfolio in a single transaction; *provided* that following such transfer (A) the entity operating the Project is (or contracts with) a Qualified Operator to operate the Project; (B) such transfer does not have a material adverse effect on the Seller's credit characteristics; and (C) the transferee maintains the applicable Seller Security in accordance with Article 19, and

(2) during periods when NEER or its Affiliate is not the direct or indirect owner of more than fifty percent (50%) of the direct or indirect equity or voting interests of Seller (which are not otherwise held by Tax Equity Investors in connection with a Tax Equity Financing) any of the following: (a) a Change of Control of Seller's Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor in connection with a Tax Equity Financing; or (c) a transfer of all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction; provided, that in the case of each of (b) or (c), following such transfer (A) the entity that operates the Project is (or contracts with) a Qualified Operator, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics, and Seller, or such Person, maintains the applicable Seller Security requirements in accordance with Article 19.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the Solar Energy Output for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; provided that if (a)(i) is less than (a)(ii), then zero, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or in entering into new arrangements which replace this PPA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this PPA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this PPA.

"**Serial Defect**" means a defect occurring in ten percent (10%) or more of the same parts or components of the Project, that is not attributable to normal wear and tear or reasonably expected lifecycle degradation.

"**Shortfall Factor**" has the meaning set forth in Section 10.9(B).

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this PPA. This PPA is Site specific, and any relocation of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. Adding or subtracting contiguous parcels of property will not be deemed a relocation requiring Buyer consent.

"**Solar Energy Output**" means Metered Output, Environmental Attributes (including, but not limited to RECs) and Ancillary Services generated by the Project.

"**Solar Energy Output Payment Rate**" means the price to be paid by Buyer to Seller for the Solar Energy Output, as set forth in Section 3.1.

"**Solar Period Hours**" has the meaning set forth in Exhibit H.

"**Solar Unit(s)**" means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with a single inverter.

"**Special Service Contract**" has the meaning set forth in the Recitals.

"**Supplemental Tax Incentives**" means any federal, state, or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any. Supplemental Tax Incentives do not and shall not include any benefits available under the Inflation Reduction Act of 2022 or any regulations promulgated thereunder, which are included in the Solar Energy Output Payment Rate.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of generating units, including the Solar Units.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits, Supplemental Tax Incentives, and any other tax credits which are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

"**Technical Expert**" means, (i) with respect to an Import Restraint, an independent third-party validation firm that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, or (4) Clean Energy Associates; or (B) mutually agreed upon by both Parties; (ii) with respect to a Counteracting Savings Notice or Express Contingency Notice, an independent third-party validation firm that is: (A) selected by Buyer if a Counteracting Savings Notice, or Seller if a Express Contingency Notice from among (1) Pricewaterhouse Coopers, (2) KPMG, or (3) Ernst & Young; or (B) mutually agreed upon by both Parties.

"**Term**" means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Energy**" means any and all Solar Energy Output generated by the Project and delivered to Buyer during the Test Period.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date.

"**Test Rated Power**" has the meaning set forth in Section 10.8(D)(5).

"**Threshold Date**" means (i) for an Eligible Change in Tariff, March 31, 2025, and (ii) for a Section 45(b) Rate Adjustment, the Execution Date.

"**Transmission Provider**" means Public Service Company of New Mexico, Inc., a New Mexico corporation, acting in its transmission function capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means (i) NEE, or, (ii) after any transfer of the direct or indirect equity interests in Seller to NEP, NEE or NEP.

"**Weather Stations**" has the meaning set forth in Section 10.11(A).

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

"**WREGIS Qualified Reporting Entity**" as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS Certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules and WREGIS Terms of Use.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this PPA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this PPA; provided, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this PPA, the terms of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this PPA as a whole.

(H) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(I) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or".

(J) Headings and Section titles are solely for convenience and should not be used to aid in the construction of this PPA.

(K) All uses of the word "shall" in this PPA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions and therefore:

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this PPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

(D) Notwithstanding the foregoing, nothing in this PPA shall be construed to limit Seller's rights, claims, causes of action or similar legal abilities against the Transmission Provider, BAA or Market Operator for actions those parties may take from time to time, nor shall this PPA be construed to limit the liability of the Transmission Provider, BAA or Market Operator with respect to Seller.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose ("**House Energy**"). Seller shall secure a contract with the local utility in whose retail service territory the Project is located ("Local Provider") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter Energy generated and delivered by the Project in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this PPA are not binding upon the Local Provider. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this PPA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and for House Energy, backfeed power, and station service power or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy, backfeed power, and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

## ARTICLE 2
## Term and Termination

2.1 Execution Date and Term. This PPA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth ($20^{th}$) Commercial Operation Year ("**Term**"), subject to the early termination provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The Term shall be unaffected by termination of the Special Services Contract.

## ARTICLE 3
## Project Description

3.1 Commercial Terms. The following commercial terms, as more fully set forth in this PPA, apply to the transaction contemplated by this PPA:

### COMMERCIAL TERMS

| | |
|---|---|
| **Buyer:** Public Service Company of New Mexico | **Seller**: Windy Lane Energy Center, LLC |

| | |
|---|---|
| **Project**: Windy Lane Solar | |
| **Point of Delivery:** The point within WECC Path 48 where Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided under this PPA, as further specified in the definition of "Point of Delivery". | |
| **Contract Term**: Twenty (20) Commercial Operation Years | **Guaranteed Solar Capacity (MWs):** 90 $MW_{AC}$ |
| **Product Type:** Bundled Energy, Ancillary Services, RECs, and Environmental Attributes | **Solar Energy Output Payment Rate:** $37.52/MWh |
| **Day(s) of week:** Monday through Sunday, including NERC holidays | **Hours:** Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time ("**MST**") |
| **Guaranteed Start Date:** One Hundred Eighty (180) Days after the Expected Commercial Operation Date | |
| **Expected Commercial Operation Date:** December 1, 2026, subject to extension as set forth in Section 3.6. | |

3.2 Project.

(A) Exhibit A provides a detailed description and implementation schedule of the Project ("**Project Schedule**"), including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

(B) Exhibit L identifies the expected first year total annual Energy to be delivered from the Project to the Point of Delivery and the corresponding capacity factor. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Solar Units and Energy Storage System at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units, Interconnection Facilities, and Energy Storage System at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practice(s), the

terms of this PPA and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Sections 3.4.A through Section 3.4.H, and Seller shall ensure that the Project meets or exceeds the standards defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery (to the extent that Project equipment capable of meeting such standard is commonly and reasonably available for procurement and installation in the Project), at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N – Interconnection Metering Diagram from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) be capable of both full load and idle operation over an ambient temperature range of -20$^{o}$F to 110$^{o}$F with the full range of relative humidity.

(F) deliver Energy to Buyer, at the frequency specified by Buyer;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of disconnection remotely by the System Control Center; and

(I) The Project shall meet or exceed the recommended performance specifications of this Section 3.4.I through Section 3.4.K, and as appropriately defined in IEEE Standard 2800-2022 Sections 5, Section 6 and Section 7 at the Point of Delivery (to the extent that Project equipment capable of meeting such standard is commonly and reasonably available for procurement and installation in the Project), at all times:

(J) [Reserved]

(K) [Reserved]

(L) The Project meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery (to the extent that Project equipment capable of meeting such standard is commonly and reasonably available for procurement and installation in the Project); and

(M) No later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the Project. These controls shall include the following MESA-ESS modes or equivalent: (i) Automatic Generation Control and (ii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Sections 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this PPA, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis, up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Excused Delay that delays construction or commencement of operation of the Project. Seller shall give written notice to Buyer describing any such Excused Delay within five (5) Business Days after becoming aware of its effect on Seller's performance under this PPA. This notice shall provide such detail concerning the Excused Delay as Seller reasonably possesses at the time. The number of Days of such extension shall be calculated from the date on which the Excused Delay begins. If cumulative extensions for Excused Delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this PPA without liability of either Party other than obligations already incurred; *provided*, however, that if cumulative extensions for Excused Delay have delayed the Commercial Operation Date for three hundred sixty-five (365) Days and Buyer has not terminated the PPA, then Seller will have the right to terminate this PPA without liability of either Party other than obligations already incurred. If the Expected Commercial Operation Date has been extended more than one hundred (100) Days due to an Import Restraint, and either Party terminates the PPA in accordance with the foregoing sentence, Seller shall pay to Buyer the

Express Contingency Termination Payment, and Buyer shall retain any unpaid Express Contingency Termination Payment from the Development Security.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity as of the determination date. If the Commercial Operation Date has not occurred before the earlier of (i) the Guaranteed Start Date or (ii) the date on which the accrued Delay Damages equal the Development Security, then Seller shall thereafter have the right for thirty (30) days to terminate this PPA immediately by providing written notice thereof to Buyer, and, other than Seller's payment of the accrued Delay Damages in the amount of the Development Security, no Buyer Termination Payment shall be due.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity of the Project has been constructed, commissioned, and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Solar Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date (as such date may be extended by the extension of the Expected Commercial Operation Date pursuant to Section 3.6), then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars ($350,000) per MW of Delayed Capacity ("**Capacity Shortfall Damages**"), in which case the Guaranteed Solar Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Energy.

(A) Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generation Operator and will designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M, forty-five (45) Days prior to the beginning of the Test Period. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Test Energy as reasonably required for purposes of testing and commissioning the Project. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to the initial delivery of Test Energy to Buyer.

(B) Seller shall retain Public Service Company of New Mexico as its WREGIS Qualified Reporting Entity to report to WREGIS under the WREGIS Operating Rules, unless agreed to otherwise by Buyer and Retail Customer. Seller shall document and provide information

required for the Qualified Reporting Entity to record RECs with WREGIS for the Test Energy generated prior to the Commercial Operation Date, including but not limited to production data and REC vintage. To the extent that Seller does not provide the necessary information or WREGIS does not provide WREGIS Certificates for the Test Energy, Seller shall (a) provide the RECs for a quantity of Energy equivalent to the quantity of such Test Energy or (b) reimburse Buyer for Buyer's costs to replace RECs for a quantity of Energy equivalent to the quantity of such Test Energy.

3.10 Notice of Commercial Operation. Not less than thirty (30) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such anticipated Commercial Operation Date; provided that such anticipated Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied (the "**Commercial Operation Notice**"). Buyer shall, within fifteen (15) Business Days, in writing either accept Seller's Commercial Operation Notice or reject it based on specifically-identified deficiencies in the criteria in the definition of Commercial Operation Date, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent Commercial Operation Notice is submitted to Buyer. If Buyer rejects the Commercial Operation Notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof utilized in the Project under this PPA is not prohibited by Applicable Law. To the fullest extent permitted by law, Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.12 Eligible Change in Tariff; Import Restraint.

(A) Seller acknowledges that this Section 3.12 is intended for sole use in connection with Retail Customer service under Schedule 36-B and is not precedential for any other contract or agreement with PNM, with Seller or with any other Person. To the extent either (X) one or more Eligible Change in Tariffs or a Section 45(b) Rate Adjustment occur between the Threshold Date and the Adjustment Cutoff Date that Seller is able to document will increase Seller's costs reasonably anticipated over the Term to perform this PPA, or reduce the value (including any limitation on Seller's ability to transfer or otherwise monetize) of any tax credits available under Section 45 or Section 45Y of the Internal Revenue Code and/or quantity thereof

that Seller reasonably anticipated receiving, by an amount that is equal to at least one and one half percent (1.5%) of either the costs for Seller to build the Facility or the value of the Section 45 or Section 45Y tax credits, as applicable, Seller anticipated on the Threshold Date, or (Y) one or more Import Restraints occur between the Execution Date and the Adjustment Cutoff Date that will delay the Expected Commercial Operation Date, Seller may prior to thirty (30) Days after each such Eligible Change in Tariff, Section 45(b) Rate Adjustment, or Import Restraint provide written notice to Buyer of an increase to the Solar Energy Output Payment Rate to keep Seller whole with respect to the cost increases in the case of an Eligible Change in Tariff or Section 45(b) Rate Adjustment, or delays that Seller reasonably anticipates in the case of an Import Restraint, including replacement supply arrangements and the required extension of the Expected Commercial Operation Date, Guaranteed Start Date, and all other Milestones (in each case, an "**Express Contingency Notice**").

(B) If Buyer disagrees with any aspect of an Express Contingency Notice, Seller shall at its expense retain the Technical Expert. Within fifteen (15) Business Days of Buyer's receipt of the Express Contingency Notice, Buyer and Retail Customer may submit a report to the Technical Expert setting forth questions, countervailing considerations, and other relevant matter, and thereafter the Technical Expert will generate a report respecting the matters set forth in the Express Contingency Notice, including whether it agrees with the cost increases in the case of an Eligible Change in Tariff or a Section 45(b) Rate Adjustment or schedule changes in the case of an Import Restraint, evidencing the facts alleged by Seller. Such report shall preserve the confidentiality of the information provided by the Parties. Buyer shall have the Report Review Period to review the report from the Technical Expert. Seller shall bear the expenses of the Technical Expert. The Technical Expert's final written determinations shall be binding on the Parties and not subject to dispute.

(C) The PPA shall be automatically amended on the first day following the Report Review Period to incorporate any increase to the Solar Energy Output Payment Rate or extension to the Expected Commercial Operation Date, Guaranteed Start Date, or other Milestones as set forth in the Express Contingency Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable, except that unless Buyer agrees otherwise in writing: (1) any increase to the Solar Energy Output Payment Rate pursuant to Section 3.12(A)(X) shall not exceed $3/MWh, and (2) any extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other Milestone pursuant to Section 3.12(A)(Y) shall not exceed one hundred and eighty (180) days; and provided further, that if Seller's Express Contingency Notice sets forth for implementation an increase to the Solar Energy Output Payment Rate that exceeds the increase limitation in clause (1) or extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other Milestone that exceeds the extension limitations in clauses (2) above, and Buyer does not accept such excess increase or extension in writing, Seller shall have the right to terminate this PPA and pay to Buyer the Express Contingency Termination Payment, but without further liability of either Buyer or Seller for such termination, upon notice to Buyer, unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security less any unpaid Express Contingency Termination Payment to Seller within fifteen (15) days after such termination.

(D) Counteracting Savings Price Adjustment. If a Change in Law occurs, after the Threshold Date and before the first anniversary of the last adjustment to price or schedule

following an Express Contingency Notice that creates savings for Seller, economic benefits for Seller, decreases costs of performance or offsets prior increases in costs to performance set forth in a previous Express Contingency Notice, Buyer may, within ninety (90) days after such Change in Law, provide written notice to Seller of a decrease to the Solar Energy Output Payment Rate (a "**Counteracting Savings Notice**"). The Parties shall use the process provided in Section 3.12(B) as if the Counteracting Savings Notice was an Express Contingency Notice for an Eligible Change in Tariff, but providing for a reduction in the Solar Energy Output Payment Rate and for Buyer to at its expense retain the Technical Expert, and Seller will have the Report Review Period to review the report of the Technical Expert. The PPA shall be automatically amended on the first day following the Report Review Period to incorporate any decrease to the Solar Energy Output Payment Rate as set forth in the Counteracting Savings Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable; provided that, unless Seller agrees otherwise in writing, any decrease to the Solar Energy Output Payment Rate under this Section 3.12(D) shall not exceed the cumulative previous increases to the Solar Energy Output Payment Rate pursuant to all prior Seller Express Contingency Notices.

## ARTICLE 4
## AGC; Curtailment

4.1 AGC; Curtailment. Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term capable of controlling each inverter. Beginning on the Commercial Operation Date and in response to directives from the System Control Center, Seller shall curtail the Project by use of the AGC system to curtail the Project as directed. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction.

(A) The Project shall be curtailable by use of the AGC system. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations. "**Deemed Energy**" means the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Compensable Curtailment, determined as follows: Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account weather and pyranometer data from the meteorological station(s), via a mutually agreed upon method, at the Site for all or a portion of the Solar Units taken out of service due to the Compensable Curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller's calculations of Deemed Energy.

(B) Seller shall reduce Solar Energy Output from the Project during and to the extent of any curtailment.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Seller shall be responsible for the costs of interconnection and costs required to deliver the Energy from the Project to Buyer at the Point of Delivery at the required voltage, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to the Project's output up to the Point of Delivery.

(B) Dispatch Priority.

(1) The Parties acknowledge and agree that the Interconnection Agreement establishes a maximum injection capacity and that such capacity shall be a limit on, and jointly used by, the Project, the ESS, and the Other Resources.

(2) The Parties therefore agree that:

a. The delivery of Other Resource Output to the Point of Delivery shall take priority over delivery of Energy from the Project.

b. The delivery of Energy shall take priority over energy discharged from the ESS, *except* that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, energy discharged from the ESS shall take priority over delivery of Energy.

(C) On a Day-ahead basis, and no later than 4:00 a.m. MST, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer. Each Friday, and no later than 12:00 noon MST, Seller shall provide Buyer a non-binding weekly Project generation forecast for the following week based on equipment availability. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond.

(E) Seller shall provide to Buyer a finalized one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to provide this information to Buyer in a timely manner.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers ("**CTs**") and potential transformers ("**PTs**") ("**Back-Up Metering**") are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery. The design of the Electric Metering Device system shall be subject to Buyer approval, not to be unreasonably withheld, prior to commencement of construction of the Project. Electric Metering Devices shall be capable of measuring and reading instantaneous, five minute, fifteen minute and hourly real and reactive Energy and capacity. Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe following such test. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.2 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Secondary Metering, fails to register, or if the measurement made by an Electric Metering Device, or Secondary Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, followed by Secondary Metering, to determine the amount of such inaccuracy, provided, however, that Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If Secondary Metering is installed on the low side of Seller's step-up transformer, the Secondary Metering data shall be adjusted for losses in the same manner as for the Primary Metering Device. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate

measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

## ARTICLE 6
## Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this PPA are subject to satisfaction of the following condition precedent: As provided in Section 17.3, receipt of NMPRC Approval.

6.2 Notice. As soon as reasonably practicable after satisfaction of the condition precedent specified in Section 6.1 or after confirmation that NMPRC Approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

## ARTICLE 7
## Sale and Purchase of Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Solar Energy Output delivered or deemed delivered by Seller at the Point of Delivery in accordance with Article 5; *provided*, *however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and purchase Energy from the Project when and to the extent that (a) a Party's performance is excused by a Force Majeure Event, (b) a curtailment is continuing, (c) a Seller Forced Outage is continuing, or (d) a Scheduled Maintenance Outage is continuing. Furthermore, and without limiting Section 10.7, Buyer shall not be required to receive or purchase Solar Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Solar Capacity, as adjusted for losses to the Point of Delivery.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Energy from the Project up to delivery and receipt at the Point of Delivery and Buyer shall be deemed to be in control of such Energy from the Project from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy from the Project

shall transfer from Seller to Buyer at the Point of Delivery. Title related to any Environmental Attributes and Future Environmental Attributes shall transfer from Seller to Buyer upon generating of the Energy from the Project.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such Future Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any Future Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this PPA, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; provided that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements and any other applicable guidelines. Buyer shall control scheduling of Metered Output. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Solar Energy Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall provide Buyer with a good faith estimate of the hourly quantities of Solar Energy Output that Seller expects to generate in the following Commercial Operation Year ("**Projected Schedule**"). Seller shall also provide estimates of the daily quantity of Energy to be delivered to Buyer. Seller shall configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than ten (10) MW per minute. PNM is not required to provide this Project as a participating resource in a regional market.

(B) [RESERVED].

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Solar Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m.

MST on each Day, submit a good faith estimate of the hourly quantities of Solar Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Seller Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage in the amount of at least five percent (5%) of the Guaranteed Solar Capacity. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage (i) in the amount of at least five percent (5%) of the Guaranteed Solar Capacity, and (ii) not available to Buyer through the SCADA System. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

7.6 Availability Guarantee. Seller guarantees that the Project shall be available to produce Solar Energy Output and shall pay Solar Availability Damages, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

## ARTICLE 8
## Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Solar Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Solar Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to: (a) the product of (i) the aggregate amount of (x) Solar Energy Output (MWh) delivered to Buyer at the Point of Delivery, and (y) Deemed Energy, *multiplied by* (ii) the Solar Energy Output Payment Rate, *plus* (b) the product of (i) Deemed Energy, *multiplied by* (ii) the value, on an After Tax Basis, of all Tax Benefits (including without limitation PTCs) that would have been attributable to such Deemed Energy. The Solar Energy Output Payment Rate also is the sole payment from Buyer to Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Solar Energy Output Payment Rate includes all Taxes. Buyer shall not be required to pay Seller for any Energy curtailed during any Reliability Curtailment.

(B) If Supplemental Tax Incentives become available in connection with the Solar Energy Output, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this PPA. At Buyer's option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this PPA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such incentives.

(C) In the event that Seller or an Affiliate of Seller realizes any Supplemental Tax Incentives with respect to the Project, the value of such Supplemental Tax Incentives actually realized will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental Tax Incentives by Seller or Affiliate of Seller, Seller will remit to Buyer a payment equal to fifty percent (50%) of the value of such Supplemental Tax Incentives.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this PPA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental Tax Incentives are applicable to the time period before the repudiation, termination, or expiration of this PPA.

## ARTICLE 9
## Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail, including an Attestation and Bill of Sale verifying the associated RECs and Environmental Attributes, if applicable, in the form of Exhibit G-2 ("**Attestation and Bill of Sale**").

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this PPA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this PPA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this PPA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Gross Receipts Tax is applicable to the sale or delivery of Solar Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Solar Energy Output and on Buyer's payment and Seller's receipt of amounts due under this PPA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Solar Energy Output to Buyer pursuant to this PPA.

(B) Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this PPA and implement the provisions in this PPA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this PPA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this PPA, including Section 9.9 below, all payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this PPA, including damages and other payments that are owed by a party to the other Party pursuant to this PPA. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this PPA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this PPA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 10
## Operations and Maintenance

10.1 Construction of the Project. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits (except to the extent otherwise provided in Section 3.12) or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale

of Product from the Project is eligible for, or receives, Tax Benefits, except to the extent otherwise provided in Section 3.12.

(A) On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule in Microsoft Project format within thirty (30) Days of the Execution Date, including key project milestones as reasonably [agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-23-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by Section 62-23-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer (after Buyer's consultation with Retail Customer), except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed Solar Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer (such acceptance not to be unreasonably withheld, conditioned, or delayed) who shall have full responsibility for the

performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this PPA with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least thirty (30) Days' prior notice of the approximate test date and ten (10) Days' prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with twenty-four (24) hours advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the

Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements, including executing customary waiver and indemnity agreements, and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this PPA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this PPA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five-minute and real-time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet operability performance requirements defined in IEEE Standard 2800-2022, Sections 5 through 8, for voltage level, harmonics, power factor, VARs, Ancillary Services (to the extent that Project equipment capable of meeting such standard is commonly and reasonably available for procurement and installation in the Project) and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. Seller shall provide Buyer with all real time measurement parameters of the Project including system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Sections 9, system protection awareness and control devices (to the extent that Project equipment capable of meeting such standard is commonly and reasonably available for procurement and installation in the Project) to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers requirements and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment,

in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day's written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than ninety (90) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all Operating Procedures and thereafter shall collaborate with Buyer to finalize mutually agreeable, written Operating Procedures within the timeline defined in Table 2 of Exhibit O. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, and Solar Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties, to be provided substantially in the form of Exhibit [__] or such other form as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, the PPA, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this PPA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following Commercial Operation Year. Should Buyer desire to change the reporting dates noted above, the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a non-binding notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's Installed Capacity, including the duration of such event. Each Scheduled Maintenance Outage for the Commercial Operation Year will be subject

to approval by Buyer, not to be unreasonably withheld. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Project's generation for any reason during daylight hours during May 1st through September 30th without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Seller may, in its sole discretion, perform scheduled maintenance on any components of the Project, so long as such maintenance is performed entirely during nighttime hours. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Metered Output to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Except as allowed under Section 12.1(A)(4), Seller shall not sell or divert Solar Energy Output to any Person other than Buyer.

10.8 Performance Tests. "**Performance Tests**" means the Commissioning Performance Test, the Annual Performance Tests, and Buyer-Requested Performance Tests as described in this Section 10.8 and in Sections 10.9, and 10.10. Performance Tests shall be performed to verify compliance of the solar photovoltaic plant net AC capacity at the Point of Delivery with the Guaranteed Solar Capacity.

(A) Seller shall conduct a performance test prior to the Commercial Operation Date in accordance with applicable provisions of this Section 10.8 (the "**Commissioning Performance Test**"). The Commissioning Performance Test shall be determined to be satisfied when the Performance Test Ratio determined from the Commissioning Performance Test results in a value greater than or equal to 1.0 (or .9 as allowed under Section 3.8) without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. In the case that the Performance Test Ratio determined from the Commissioning Performance Test is below 1.0, Capacity Shortfall Damages shall be due from Seller in accordance with Section 3.8 of this PPA. Capacity Shortfall Damages shall be applied to a Delayed Capacity value equivalent to the Guaranteed Solar Capacity multiplied by (1 - the as-tested Performance Test Ratio) and then multiplied by the Capacity Shortfall Damage rate identified in Section 3.8.

(B) Seller shall conduct a performance test in accordance with this Section 10.8 in each Commercial Operation Year after the Commercial Operation Date (each, an "**Annual Performance Test**"). Each Annual Performance Test shall be performed no earlier than nine (9)

months and no later than fifteen (15) months from the completion of the previous Annual Performance Test or Commissioning Performance Test as mutually agreed by the Parties.

(C) Annual degradation rates included in Exhibit K will be used in the Annual Performance Test PVSYST Model for the purpose of Annual Performance Tests described in this Section 10.8. Annual degradation rates identified in Exhibit K shall be applied as incremental to either (i) the actual degradation experienced and measured through the prior Commercial Operation Year's Performance Test, or (ii) if the prior Commercial Operation Year's Performance Test does not measure degradation, the rate identified in Exhibit K for the prior Commercial Operation Year.

(D) The Commissioning Performance Test, Annual Performance Tests, and Buyer-Requested Performance Tests shall be conducted in accordance with ASTM E2848-13, except where deviations are provided in this Section 10.8(D).

(1) The reporting conditions ("**RC**") will be developed in accordance with ASTM E2939-13 and will utilize site measured irradiance and ambient temperature data collected during the Performance Test. The same RC will be used for computing the Model Rated Power and Test Rated Power using their respective regression equations.

(2) The Performance Test period will include at least five (5) days of data and at least fifty (50) filtered data points.

(3) Model Rated Power and Test Rated Power shall account for losses to the Point of Delivery.

(4) The result from an Annual Performance Test or Buyer-Requested Performance Test is the ratio of Test Rated Power to Model Rated Power (the "**Performance Test Ratio**").

(5) "**Test Rated Power**" shall be the value produced by the regression of filtered site measured power and site measured weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(6) "**Model Rated Power**" shall be the value produced by the regression of filtered Annual Performance Test PVSYST Model power and filtered model weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(7) The Model Rated Power will be calculated using the Annual Performance Test PVSYST Model. Site measured POA irradiance will be used as the irradiance input to the Annual Performance Test PVSYST Model.

(8) The PVSYST model utilized by Seller to predict the Annual Generation Forecasts included in Exhibit L will be used as the PVSYST model for initial comparison to the actual site performance during the Commissioning Performance Test. Such PVSYST model and a listing of model input assumptions

shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of the Commissioning Performance Test. Should any modifications to this PVSYST model be proposed by Seller after completion of the Commissioning Performance Test, Seller shall provide to Buyer the proposed modifications to the draft PVSYST model for review and approval. Any modifications to the PVSYST model mutually accepted by the Parties will be incorporated and the resulting modified PVSYST model together with a schedule of annual degradation will be the "**Annual Performance Test PVSYST Model**".

(9) The Annual Performance Test PVSYST Model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer within one (1) month of the completion of the Commissioning Performance Test. The Annual Performance Test PVSYST Model will annually account for actual degradation through the prior Performance Test with incremental annual degradation added as previously agreed to by the Parties. This mutually accepted Annual Performance Test PVSYST Model will be utilized without modification, unless agreed to by both Parties, in all Annual Performance Tests and Buyer-Requested Performance Tests as well as determination of any Annual Performance Test Guarantee Damages as defined in Section 10.9.

(E) Within thirty (30) Days of the completion of a Performance Test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the Annual Performance Test.

(F) For all Performance Tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the Performance Test or re-test, and Buyer shall have the option to inspect the Project during such Performance Test or re-test.

(G) For all Performance Tests and re-tests, Seller shall provide a "**Performance Test Report**" that includes all performance data, model simulations, calculations, and test reports to the Buyer for analysis and review. Seller shall maintain records of performance testing for a minimum of five (5) years following the date the test was performed.

(H) Proposed terms associated with the irradiance conditions, degradation allowances, modeling software inputs, and the results evaluation methodology to be utilized for documenting the tested performance shall be provided by the Seller and subject to mutual agreement of the Parties.

10.9 Annual Performance Test Guarantee Damages.

(A) Seller guarantees that Annual Performance Tests shall meet or exceed the Annual Performance Test Guarantee. The "**Annual Performance Test Guarantee**" is met when the average of the Performance Test Ratio for the Annual Performance Test and the Performance Test Ratio for the previous Annual Performance Test, or the Commissioning Performance Test (i.e. 1.000) as applicable, results in a value greater than or equal to 0.95 (the "**Annual Performance Test Guarantee Ratio**") without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. If an Annual Performance Test

shows that the Annual Performance Guarantee was met, then Seller shall not owe Annual Performance Test Guarantee Damages.

(B) If any Annual Performance Test shows that the Annual Performance Guarantee was not met, then Seller shall owe Annual Performance Test Guarantee Damages calculated in accordance with this Section 10.9. The calculated Energy shortfall (the "**Energy Shortfall**") shall be the total Energy delivered by Seller in the most recently completed Commercial Operation Year multiplied by the Shortfall Factor. The "**Shortfall Factor**" is one (1) minus the ratio of the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year and the Annual Performance Test Guarantee Ratio. These calculations shall be performed using the following formulas:

$$ES = E_n \times SF$$

$$SF = 1 - \frac{\frac{1}{2}(PTR_n + PTR_{n-1})}{APTGR}$$

Where,

ES = Energy Shortfall

$E_n$ = Energy delivered by Seller in the most recently completed Commercial Operation Year

SF = Shortfall Factor

$PTR_n$ = Performance Test Ratio for the most recently completed Commercial Operation Year

$PTR_{n-1}$ = Performance Test Ratio for the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year

APTGR = Annual Performance Test Guarantee Ratio

(C) Seller shall pay Annual Performance Test Guarantee Damages in accordance with this Section 10.9. Liquidated damages associated with failure to meet the Annual Performance Test Guarantee shall be paid in the amount equal to (x) the Solar Energy Output Payment Rate, *multiplied by* (y) the Energy Shortfall, as determined using the above calculation (the resulting amount is the "**Annual Performance Test Guarantee Damages**"), but in no event in excess of the Annual Solar Capacity Guarantee Damages Cap and the Aggregate Solar Capacity Guarantee Damages Cap.

(D) The following is an example (for illustrative purposes only) of the Energy Shortfall calculation: A Performance Test is conducted and results in an average Performance Test Guarantee Ratio of 0.930 (the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year). The Solar Energy Output

Payment Rate is $[●]/MWh and the total annual Energy delivered by the Project in the most recently completed Commercial Operation Year is 130,000 MWh. Annual Performance Test Guarantee Damages shall be paid as a result of the Performance Test Ratio being less than the Annual Performance Test Guarantee Ratio of 0.95. The amount of Annual Performance Test Guarantee Damages is calculated to be [$[●]/MWh] X [130,000 X (1 - 0.930 / 0.950)] = $[●].

(E) The total Annual Performance Test Guarantee Damages payable by Seller for failure to meet the Annual Performance Test Guarantee in any Commercial Operation Year shall be capped annually at a value equivalent to Thirty Thousand Dollars ($30,000) per MW of Guaranteed Solar Capacity ("**Annual Solar Capacity Guarantee Damages Cap**"). The total Annual Performance Test Guarantee Damages payable by Seller shall be capped in the aggregate at a value equal to Ninety Thousand Dollars ($90,000) per MW of Guaranteed Solar Capacity ("**Aggregate Annual Solar Capacity Guarantee Damages Cap**") over the Term of the PPA.

(F) Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for the failure of Seller to meet the Annual Performance Test Guarantee or the Annual Performance Test Guarantee Ratio (including in the event of any Buyer-Requested Performance Tests), shall be the payment of Annual Performance Test Guarantee Damages as and when required in this Section 10.9, up to the Annual Solar Capacity Guarantee Damages Cap and the Aggregate Annual Solar Capacity Guarantee Damages Cap; provided, however, that the foregoing shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail meet the Annual Performance Test Guarantee or the Annual Performance Test Guarantee Ratio. Any such failures shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default under this PPA.

10.10 Buyer-Requested Performance Tests. In the event of a material adverse change in expected Solar Energy Output based on monthly billing, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the conditions described in this Section 10.10. Buyer-Requested Performance Tests will be conducted as described in Section 10.8, for Buyer-Requested Performance Tests performed within the second and subsequent Commercial Operation Years.

(A) If the results of a Buyer-Requested Performance Test fail to meet the Annual Performance Test Guarantee Ratio, Annual Performance Test Guarantee Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(B) Two (2) Buyer-Requested Performance Tests may be requested per Commercial Operation Year.

(C) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

10.11 Weather Stations.

(A) Seller shall, at Seller's cost and no later than three (3) months prior to the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations ("**Weather Stations**") at the Project Site to monitor

and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by Seller's engineer and agreed to by Buyer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall be of a grade equivalent to or better than those used in large-scale utility solar facility installations and include the capability for measuring, indicating, and recording ambient temperature, wind speed and direction (instantaneous and average), barometric pressure, solar radiation, and relative humidity. Seller shall submit to Buyer for review and approval, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules, current inverters, and other prominent features, as applicable. The Weather Stations shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to be maintained by Seller and to provide an unrestricted, real-time indication of all measured parameters to Buyer and the data shall be available to Buyer via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted real time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations.

(C) Data collected from the Weather Stations shall be utilized for determination of the Solar Performance Ratio, minimum solar irradiance for determination of system availability and lost output due to curtailment or outages.

10.12 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall, along with the invoice provided pursuant to Section 9.1, provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Solar Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

ARTICLE 11
RECs and Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer within fifteen (15) Business Days of the RECs being created in WREGIS and available for transfer. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within fifteen (15) Business Days after written notice from Buyer of such failure, and such failure is due to Seller's fault or negligence. The RECs and Environmental Attributes transferred under this PPA are bundled with the associated Energy.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Buyer may, to the extent permitted by Applicable Law and this PPA, assign its rights, title and interest in and to any RECs and Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) [Reserved].

(E) Seller shall, at its sole expense and before commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the purpose of creating and tracking all Renewable Energy Certificates corresponding to all Metered Output including all Test Energy, and that all associated WREGIS Certificates are issued and tracked and transferred in a timely manner to Buyer. If required by WREGIS for the creation of Renewable Energy Certificates or associated WREGIS Certificates for the full Solar Energy Output, Seller at its sole cost and expense will add a meter for the Project on the low side of Seller's step-up transformer. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account. Buyer shall have the exclusive right to transfer RECs and Environmental Attributes to Retail Customer's WREGIS account, or retain the RECs and Environmental Attributes in Buyer's WREGIS account and retire the RECs and Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(F) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and

certification requirements under any applicable federal, state or regional program or Applicable Law.

(G) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, which shall be Public Service Company of New Mexico, unless agreed to otherwise by Buyer and Retail Customer.

(H) Seller shall not report in any public communication, or under any program, that any of the Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer or retail Customer. During the Term, Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Environmental Attributes for Buyer to own, hold and manage in Buyer's or Retail Customer's own name and account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Environmental Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Environmental Attributes, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. Seller shall have no duty to search for third-party claims but will have the duty to inquire and investigate as appropriate to support resolution of third-party claims which it has made, or of which it has become aware or have been reported to it by Buyer. To the extent that any such public communication is allowed under Section 13.1, in any public communication concerning the Project, Project Energy or the Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Project Energy, *provided* that no portion of the foregoing affects Seller's ownership of or entitlement to Tax Benefits.

## ARTICLE 12
## Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller enters into an assignment for the benefit of creditors;

(3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller's voluntarily taking advantage of any such law by answer or otherwise;

(4) The sale by Seller to a third party, or diversion by Seller for any use, of Solar Energy Output (or any component thereof) committed to Buyer in this PPA; provided, however, during a Buyer Event of Default, Seller may sell Metered Output to third parties;

(5) Seller's actual fraud, waste, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this PPA or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date or other date mutually agreed to by the Parties in writing;

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA on more than three occasions in any rolling thirty-six consecutive month period;

(8) The Project fails, after the third anniversary of the Commercial Operation Date, to maintain an Actual Solar Availability Percentage of at least eighty percent (80%) over two (2) successive Commercial Operation Years; provided, however, for a (i) single occurrence during the Term of this PPA for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, or (ii) for two (2) occurrences during the Term of this PPA for a period of no longer than two hundred seventy (270) days each, if the Project suffers a Serial Defect, then to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer or replace the components affected by the Serial Defect, the impacts of such MPT Failure or Serial Defect(s) shall be excluded from the Mechanical Availability calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(8);

(9) The Project fails to obtain an Actual Solar Availability Percentage of at least fifty-five percent (55%) over any Commercial Operation Year; provided, however, for a (i) single occurrence during the Term of this PPA for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, or (ii) for two (2) occurrences during the Term of this PPA for a period of no longer than two hundred seventy (270) days each, if the Project suffers a Serial Defect, then to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer or replace the components affected by the Serial Defect, the impacts of such MPT Failure or

Serial Defect(s) shall be excluded from the Mechanical Availability calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(9); or

(10) Seller's representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to be false or misleading in any respect;

(11) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The Delivery Term Security has been fully drawn by Buyer and, pursuant to Section 19.1, Seller has elected to not replenish up to the full initial amount thereof within ten (10) Business Days of receipt of written notice;

(3) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(4) The failure of any Seller Guarantor to be NEECH or Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) Seller's failure to make any payment due to Buyer under or in connection with this PPA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this PPA), unless remedied within ten (10) Days of receipt by Seller of written notice of such failure from Buyer;

(6) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice.

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA, unless remedied within five (5) Business Days of receipt of notice of such failure.

(8) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only

if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to deliver Energy to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including, but not limited to, the Interconnection Agreement) required to deliver Energy to the Point of Delivery;

(3) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this PPA;

(4) Seller's failure to maintain in effect any agreements required to deliver Solar Energy Output to the Point of Delivery;

(5) Seller's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Buyer;

(6) Seller fails to register the Project within WREGIS or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this PPA.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this PPA, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate

that could materially impact Seller's ability to perform its obligations hereunder; *provided, however*, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable (unless otherwise stated):

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise;

(4) Buyer, in its separate merchant function capacity, willful tampering with or willful physical damage to Seller-owned facilities and Buyer fails to remediate such damage within thirty (30) Days of Seller's written demand;

(5) Buyer's assignment of this PPA except as permitted in accordance with Article 18;

(6) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer;

(7) Buyer's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Seller shall constitute an Event of Default upon the failure of Buyer to cure within thirty (30) Days of written notice from Seller to Buyer;

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer. or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(2) Any representation or warranty made by Buyer in this PPA shall prove to have been false or misleading in any material respect when made or ceases

to remain true during the Term, if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an uncured Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this PPA from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security, and (v) exercise its rights to terminate this PPA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer

Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. Seller shall calculate the Seller Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(B). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material performance obligation of the other Party under this PPA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss. The Parties agree that the Termination Payment does not represent such waived consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

12.8 Payment of Amounts Due. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, either Party may send the other Party an invoice for such damages or other amounts as are due to the Party providing the invoice at such time from the other Party under this PPA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this PPA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE 13
## Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed) to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this PPA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this PPA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this PPA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written

notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this PPA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records, subject to such Party's ability to redact information it reasonably deems competitively sensitive; *provided*, such redactions do not prevent a Party from exercising its rights and remedies and performing its obligations under this PPA.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) quarterly construction progress reports until the start of construction and monthly thereafter in such form as may be agreed to by Buyer in accordance with Sections 10.1(A) and 10.1(B), and (ii) reports, of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Solar Energy Output from, the Project in accordance with this PPA, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this PPA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Solar Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any

outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the Solar Units.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contract, and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the reasonably incurred expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a

resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

## ARTICLE 14
## Force Majeure

14.1 Definition of Force Majeure.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises after the Execution Date that (i) is not reasonably foreseeable, (ii) is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, (iii) cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and (iv) adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(ix) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic, including COVID-19, shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this PPA is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other

regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Solar Energy Output of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws or material or serial defects; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; (viii) a Seller Forced Outage, except to the extent caused by a Force Majeure Event; (ix) an Eligible Change in Tariff, (x) an Import Restraint, or (xi) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of three hundred sixty-five (365) Days from its inception, either Party may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this PPA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days after the Party becomes aware of the Force Majeure Event; *provided* that notice given after such ten (10) Business Day period is effective only for the period after the notice is given, of such occurrence, of the

nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Solar Energy Output from the Project or to deliver Solar Energy Output from the Project, then any lost production (MWh) during the Force Majeure Event shall be excluded from the determination of the Monthly Solar Output Payment as set forth in Section 8.1.

## ARTICLE 15
## Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution and delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any material violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have upon the generation of Solar Energy Output, good and marketable title to the RECs, Environmental Attributes, and Future Environmental Attributes.

(K) Seller has not sold, delivered or transferred the RECs, Environmental Attributes or Future Environmental Attributes to any other Person, in whole or in part.

(L) All right, title and interest in and to the RECs, Environmental Attributes and Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, §§ 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this PPA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(P) This PPA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(Q) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1, and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

## ARTICLE 16
## Insurance

16.1 Evidence of Insurance. Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G-1 and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the Term of this PPA on an "occurrence" basis. In the event that any insurance as required

herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this PPA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this PPA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17
## Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the PPA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this PPA to the extent

Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 as Confidential Information in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval, in connection with (i) the execution and performance of this PPA; (ii) a final order or other regulatory determination from the NMPRC (A) that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement and (B) approving revisions to the Special Services Contract; (iii) any waivers as set forth in Buyer's request for approval of this PPA; and (iv) the execution and performance of the additional renewable energy procurement under the Special Service Contract (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to a motion for rehearing or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this PPA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This PPA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if neither Buyer nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made by Buyer or Retail Customer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this PPA should remain in effect. Upon automatic termination, this PPA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than

fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA. If the Parties and Retail Customer are unable to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties and Retail Customer conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by December 31, 2025 ("**Regulatory End Date**"), then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

## ARTICLE 18
## Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) a collateral assignment to a Lender, in accordance with Section 18.6, (ii) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; or (iii) any assignment or transfer of this PPA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clause (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) except in the case of an assignment or transfer pursuant to clause (ii), delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA.

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this PPA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this PPA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this PPA with the Affiliate as if such Person had been named under this PPA; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this PPA made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to

do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this PPA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this PPA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this PPA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this PPA to Seller's Lenders pursuant to Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this PPA.

## ARTICLE 19
## Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed Solar Capacity ("**Development Security"**) within the earlier of (i) ninety (90) Days after the Execution Date and (ii) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed Solar Capacity (the "**Delivery Term Security**"). Seller may, at its discretion, convert all or part of the Development Security to Delivery Term Security by written notice to Buyer. Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer except that the aggregate amount of such replenishment during the Term shall not exceed three times (3x) the Delivery Term Security requirement. Development Security shall not be replenished. Buyer will return the Development Security to Seller in full within fifteen (15) Days after Seller posts Delivery Term Security. Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) day termination of this PPA in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b)

a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is NEECH or Creditworthy, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) days of expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this PPA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this PPA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this PPA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security

provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this PPA, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this PPA.

## ARTICLE 20
## Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses, and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as

indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21
## Governmental Charges

21.1 Allocation of Governmental Charges. In the event of any contradiction between this Section 21.1 and Section 9.7, Section 9.7 shall control. In the event of any contradiction between this Section 21.1 and Section 22.2, this Section 21.1 shall control. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Solar Energy Output that are imposed on the making available of Solar Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Solar Energy Output that are imposed at and from the taking of Solar Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by

such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

## ARTICLE 22
## Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties.

Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Certain Third Party Beneficiary Rights.

(A) In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly permitted in this PPA in Section 22.4(B), nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this PPA, Retail Customer is an express third-party beneficiary to this PPA. The provisions of this PPA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as express third party beneficiary hereof as if it were a Party hereto. For the avoidance of doubt and without limiting the foregoing, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer notice of a change in the location of the Site;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project;

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the PPA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the PPA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed.

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to its employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification.

Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations.

Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability.

In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments.

The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to approval by any Governmental Authority with jurisdiction over this PPA, this PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect.

This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings.

Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

22.12 Counterparts.

This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the

document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum.

The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this PPA shall be brought in a court of competent jurisdiction in the United States District Court for the District of New Mexico; the parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. . **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS PPA. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "**Receiving Party**" refers to the Party receiving information from the other Party.

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, technical advisors, contractors, consultants, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this PPA, the Disclosing

Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this PPA that relates solely to this PPA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this PPA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure

shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall notify Buyer as soon as reasonably practicable of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("**Data Breach**") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access.

(A) Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this PPA and the Environmental Attributes that are generated (or to be generated) under this PPA and delivered or required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain (if such rights are held by someone other than Seller) and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project (which reasonableness may vary according to the notice Seller receives from Buyer) for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this PPA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not

prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this PPA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Should Seller have a dedicated operations and maintenance or other building associated with the Project, signage will be included inside such building(s), the size and style of which will be reasonably and mutually agreed between Seller and Buyer after consultation with Retail Customer, displaying information about Retail Customer's affiliation with the Project and Retail Customer's logo. In addition, Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this PPA constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code § 101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the PPA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer

to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the following provisions apply for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Seller shall provide Buyer all information as Buyer shall reasonably request for Buyer or Retail Customer to comply with the Scope Reporting Rule.

(F) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial

statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use commercially reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section 22.18.

22.19 Telephone Recording. Each Party to this PPA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this PPA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Facility or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this PPA in accordance with Section 12.4. In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses incurred by Seller, Seller Parties or Contractors are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will promptly report to

Buyer in writing of any actual or threatened breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Government Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Facility or the Site, Seller represents and warrants that, to the best of its knowledge, none of its Contractors has engaged in offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. Seller will require (through contract or other obligation) and enforce Contractors expressly agreement to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and Buyer shall have the right to withhold further payments after Buyer has provided Seller notice of such audit without any liability to Seller until Buyer is reasonably satisfied that no breach has occurred; provided that Buyer shall make such payments with interest at the Default Rate if Buyer is reasonably satisfied that no breach has occurred. If the PPA is terminated pursuant to an Event of Default under Section 12.1(A)(10), Buyer shall have no obligation to make further payments hereunder.

22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party or its Contractors to be responsible for, exporting and importing any equipment or property (to the extent such equipment or property are exported or imported) that Seller, Seller Parties or Seller's Contractors, as applicable, import with respect to the Facility, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority with respect to exporting or importing such equipment or property.

(B) In no instance may Seller, Seller Parties or Seller's Contractors list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List (at the time provided), or (ii) originated, offloaded or transferred to a different ship or carrier in any Sanctioned Territory (at the time of origination, offloading or transfer, as applicable).

(D) At Buyer's written request, Seller shall provide to Buyer all Trade Control related documentation in Seller's possession which Seller may share in compliance with

confidentiality obligations, as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with), or respond to enquiries from any Governmental Authority in relation to, Trade Controls; provided that, if such Trade Control related documentation is in possession of Seller's Contractors but not Seller, Seller shall make commercially reasonable efforts to request from such Contractor the required documentation and, to the extent required, permission to disclose such documentation to Buyer.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and that as of the Execution Date none of its Contractors is a Sanctioned Person and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not directly engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure that its Contractors expressly agree in writing to Trade Controls undertakings, representations, and warranties substantially similar to this Section 22.21 (Trade Controls) with respect to any equipment that such Contractor imports into the United States or such Contractor's work in connection with this Agreement; provided that, a failure by Seller solely to comply with its obligations under this clause (g) shall not be a default under this Agreement.

(H) Notice. If Seller becomes aware that (a) any breach of the terms of If Seller becomes aware that (a) any breach of the terms of this Section 22.21 has occurred or is likely to occur, or (b) Seller, any Seller Party, or any Contractor has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days thereof.

(I) Excusal. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal under Sanctions; provided that if such excused performance (including making any payments) becomes no longer illegal under Sanctions, Buyer shall perform such obligation (including making of any previously excused payment).

(J) Subject to Section 12.1(B)(8) and the cure period therein, Buyer may terminate this PPA, within five (5) Business Days and without further liability, upon written notice to the Seller, if the Seller has breached Section 22.21(A), (B), (C), or (E), in which case, the Buyer shall have no obligation to make further payments to Seller to the extent that making such payments would be illegal under Sanctions.

22.22 Change in Law; Market Structure.

(a) Change in Law. If a Change in Law occurs that makes it impossible or illegal for a Party to perform an obligation under this PPA lawfully, the Parties shall negotiate in

good faith to amend this PPA within sixty (60) Days after the affected Party provides written notice to the other Party with respect to such Change in Law as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties as of the Effective Date; provided, however, that a waiver by the Party owed the illegal or impossible performance of the obligation to perform shall restore the allocation without need for an amendment or further action of the Parties. In the absence of such a waiver, if the Parties fail to enter such an amendment by the end of such sixty (60) Day period, the Parties shall refer the issue for dispute resolution under Section 13.8.

(b) Change in Market Structure. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will or can participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, Retail Customer or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform this PPA, the Parties and Retail Customer shall negotiate in good faith to amend this PPA to resolve such changes in order to effect performance of this PPA, at the least possible cost to the Parties and Retail Customer, consistent with this PPA to the extent possible.

*[Signature page(s) follow]*

IN WITNESS WHEREOF, the Parties have caused this PPA to be duly executed as of the date first above written. This PPA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

Name Omni Warner

Title Vice President

WINDY LANE ENERGY CENTER, LLC

By: _____

Name: Anthony Pedroni

Title: Vice President

Legal Review Completed AHF

[Signature Page to Power Purchase Agreement]

**EXHIBIT A**
(to Power Purchase Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: Windy Lane Energy Center, LLC
2. Location: Co-located with existing New Mexico Wind Energy Center and Casa Mesa Wind in De Baca County, New Mexico

   Latitude: 34°35'33.31"N Longitude: 104° 1'53.08"W
3. Owner (if different from Seller): N/A
4. Operator: Seller or Affiliate thereof
5. Equipment/Fuel:
   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Solar PV
   b. Total number of units at the Project: Approximately 32 inverters
   c. Total nameplate capacity (MWp): Approximately 109.8 $MW_{DC}$
   d. Total capacity at point of delivery: 90 $MW_{AC}$ at the Point of Delivery
   e. Additional technology-specific information: Approximately 191,609 photovoltaic modules
6. Project Schedule:

| Key Milestone | Date |
|---|---|
| LGIA Execution | 5/31/2025 |
| Major Equipment Supply Agreements Executed | 5/2025 |
| Discretionary Permits | 11/1/2025 |
| Close Financing | 12/1/2026 |
| 30% Design Complete | 6/17/2025 |
| Start of Project Construction | 12/2025 |
| First Major Equipment Delivered to Site | 4/2026 |
| Interconnection In-Service Date | 9/1/2026 |
| Commissioning Start Date | 8/1/2026 |
| Expected Commercial Operation | 12/1/2026 |
| Guaranteed Start Date | Defined in 3.1 |

7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.

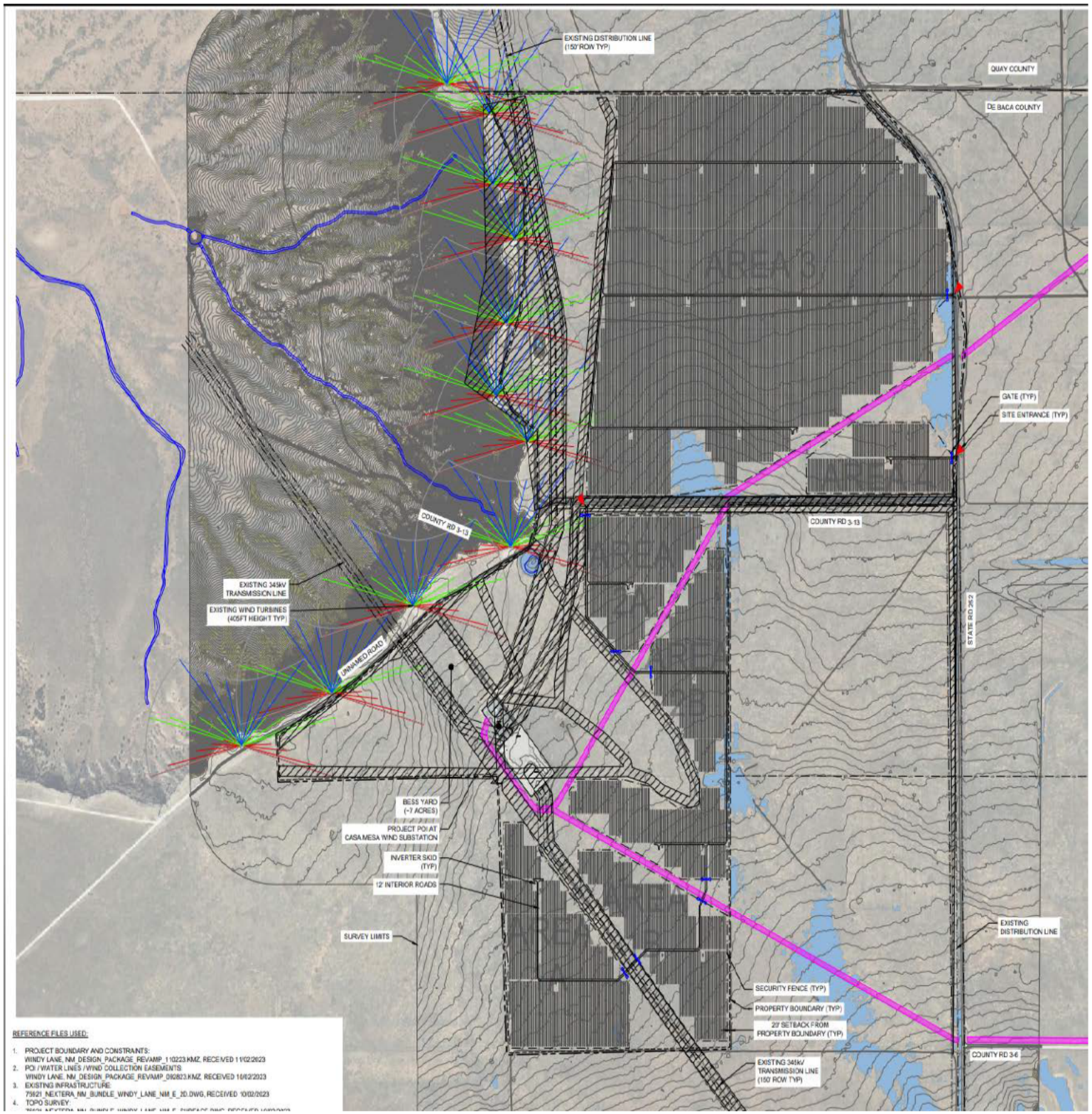


**EXHIBIT B**
(to Power Purchase Agreement)

**ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram of the Project, which will be delivered by Seller within ninety (90) Days of the Execution Date. The diagrams indicate the following:

   - Interconnection Facilities;
   - the network upgrades;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);

   - communications and telemetry configuration with associated redundancy;
   - the House Energy power source and associated dedicated electric meter; and
   - redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is PNM's 345kV Taiban Switchyard.

**EXHIBIT C**
(to Power Purchase Agreement)

**DESCRIPTION OF SITE**

Southwest Quarter (SW¼), South Half of the Northeast Quarter (S½NE¼), South Half of the Northwest Quarter (S½NW¼), Southeast Quarter (SE¼), and Lots 1, 2, 3, and 4, all in Section 5; AND the West Half (W½) of Section 8; AND the Northeast Quarter (NE¼) of Section 7, all in Township 4 North, Range 28 East, N.M.P.M., DeBaca County, New Mexico.

Containing approximately 827 acres, more ore less.

**EXHIBIT D**
(to Power Purchase Agreement)

**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**Notices:**

**Delivery Address:**

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

**Invoices:**

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:
PNMEAM@pnmresources.com

**Scheduling:**

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

**Payments:**

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

**Wire Transfer:**

Wells Fargo Bank
ABA# [●]
Albuquerque, New Mexico
ME Whsle Pwr Depository: [redacted]
Attn: EA-Wholesale Power Marketing

**Windy Lane Energy Center, LLC**

**All Notices/Invoices:**

**Delivery Address:**

WINDY LANE ENERGY CENTER, LLC
Attn: Business Management
700 Universe Blvd.
Juno Beach, FL 33408
Phone: 561-801-8079
Email: DL-NEXTERA-BM-NEWMEXICO@nexteraenergy.com

With copy to:

NextEra Energy Resources, LLC
Attn: General Counsel
700 Universe Blvd.
Juno Beach, FL 33408
Email: NEER-General-Counsel@nexteraenergy.com

**Wire Transfer:**

Bank of America
ABA: [redacted]
Acct: [redacted]

**With additional Notice of an Event of Default, termination and other legal notices to:**

NextEra Energy Resources, LLC
Attn: Business Management
700 Universe Blvd.
Juno Beach, FL 33408
Phone:561-801-8079
Email:DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com

**Project Manager:**

**Contract Manager:**

Public Service Company of New Mexico
Attention: Eric Meadors
2401 Aztec Dr. NE
Albuquerque, NM 87107
Telephone: (505) 241-2179
Email: eric.meadors@txnm.com

**With additional Notice of an Event of Default, termination and other legal notices to:**

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

**With a copy to:**

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

NextEra Energy Resources, LLC
Attn: Ashley Sgaliardich – Project Director
700 Universe Blvd.
Juno Beach, FL 33408
Phone: 561-876-5215
Email:Ashley.sgaliardich@nexterenergy.com

**EXHIBIT E**
(to Power Purchase Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

| PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION | GOVERNMENTAL ENTITY |
|---|---|
| Access/Driveway Permit | New Mexico Department of Transportation (NMDOT)/De Baca County |
| Structural Building Permit | New Mexico Construction Industries Division (NMCID) |
| Electrical Building Permit | New Mexico Construction Industries Division (NMCID) |

# EXHIBIT F

(to Power Purchase Agreement)
**COMMISSIONING AND ANNUAL TESTS**

**Commissioning Tests**

- String Insulation Resistance and Continuity Tests
- String Voc measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- SCADA Functionality Test (or equivalent)
- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- Voltage Setpoint Functionality Test
- Buyer Data Link Functionality Tests (See Section 3.4)
- Project Reliability Test
- Commissioning Performance Test (See Section 10.8)

**Annual Tests**

- Annual Performance Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

## A. SCADA Functionality Test

**Purpose:**
This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering ("**POE**"). This test must be performed prior to energization of the Project.

**Procedure:**
Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall then contact Buyer's POE Team four (4) to six (6) weeks in advance to submit a database modification request (DBMOD) and request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. Testing phases 1-3 (below) require only POE contacts, but phase 4 will also require Buyer's Operator support.

The test shall include, but is not limited to, the following verification:

1) Status points
   - Verify POE is receiving the intended state of Seller's switches and breakers
   - Verify POE can see and change the value of states of Seller's switches and breakers
   - Verify the functionality of the local/remote mode indication status
2) Analog points
   - Verify POE is receiving the intended value
   - Verify POE receives a changed value
   - Verify values have the correct scaling
3) Accumulator points (as applicable)
   - Verify POE is receiving an inserted value
   - Seller reverts to original value then verifies POE receives the new value
   - Verify values have the correct scaling
4) Control points (as applicable)
   - Verify the functionality of all breakers to be controlled by Buyer's POE
   - Verify the functionality of all switches to be controlled by Buyer's POE
   - Verify POE can control all reclosers
   - Verify on-site personnel have capability of changing states and values
   - Verify the functionality of all Setpoints
   - Verify the functionality of all feedback points

Completion of this test will be acknowledged verbally between Buyer's personnel and the stakeholders involved. This test must be repeated for changes to the states table(s) and/or list of points.

**B. Automatic Generation Control (AGC) Functionality Test**

Purpose**:**
This test will demonstrate the ability of the Project to synch to AGC. This test will occur after the Project has energized.

System **starting state:**
The Project will be in the on-line state and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("**EMS**") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure**:**
Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team four (4) to six (6) weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour operational activities.

**Remote Mode Testing**
Seller will set the Project to REMOTE mode, and verify the Project accepts AGC.

- Operator will send a setpoint to the Project
- Validate the Project responds to the setpoint
- Operator will send a setpoint above and/or below Project operation limits
  - Validate the Project sends alarms

Buyer's Operator will set the AGC Control mode to MARKET:
- Validate the Project responds to a DOT from CAISO
- Validate the setpoint and feedback matches the DOT

Buyer's Operator change the Project to MARKET in AGC
- Validate the Project changes the control mode

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG
- Hold for up to 10 minutes
- Validate the Project responds to ACE of +/- 10 MW

**Local Mode Testing**
On-site personnel change the Project to LOCAL mode
- Validate the Project changes from REMOTE to LOCAL mode
- Validate the Project follows gross MW requested on-site
- Validate the Project does not respond to setpoint changes

System end state:
The Project will be in the on-line state and with control mode set to LOCAL.

**C. Voltage Setpoint Functionality Test**
- **[LATER]**

**D. Buyer Data Link Functionality Test**

The Buyer Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Project control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party), and assist as necessary to set up the Buyer Data

Link.

Seller shall prepare and submit to Buyer a Data Link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Buyer Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Buyer Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

## E. Project Reliability Testing

**D.1** Operational Reliability

A. Purpose of Test

To demonstrate the short-term reliability of the Project.

B. Test Procedure

The Project shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the Project remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any material alarms, faults, trips, or manual intervention required, except that Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity shall be available for the Commissioning Performance Test.

## F. Performance Testing

**Purpose**

This Section outlines the procedures and requirements for the Commissioning Performance Test and the Annual Performance Tests (each, a "Performance Test"), and will verify the plant is operating according to specification by achieving (i) at least ninety percent (90%) of the Guaranteed Solar Capacity during the Commissioning Performance Test, and (ii) the Annual Performance Test Guarantee during the Annual Performance Tests, under and pursuant to Section 10.9(A) of this PPA.

**Definitions**

"Annual Degradation" – The agreed upon annual AC degradation rate of the system is as defined in Section 10.8(C) and Exhibit K of the PPA. For any Performance Test, the annual degradation will be applied as incremental degradation from the actual degradation experienced and measured through the prior Commercial Operation Year's Performance Test, with such actual degradation

not to result in a solar capacity less than the Degradation-Adjusted Annual Guaranteed Solar Capacity value in Exhibit K.

"Annual Performance Test PVSYST Model" – The Annual Performance Test PVSYST Model including any post-processing that is based on the as-built drawings and adjusted for degradation, soiling, and albedo as discussed within this Exhibit F. The model will include the Annual Degradation, measured albedo and soiling during the test and remove any assumptions for snow and availability.

"Annual Performance Test Guarantee" – An average Performance Test Guarantee Ratio of at least ninety-five percent (95%).

"Minimum Data Points" – Occurs when at least 150 allowable 5-minute qualifying data points meeting the requirements set forth in this Exhibit F are recorded after all data filtering has occurred as outlined herein.

"Model Rated Power" – The value produced by the regression of filtered PVSYST model power and filtered model weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Model Rated Power as calculated shall account for losses to the Point of Delivery and shall be determined using the procedures outlined herein. Parties shall work in good faith to adjust losses in the event they are impacted by additional project phases on a shared line. Regression of Model Rated Power data points shall be performed for the thirty (30) Days centered about the Performance Test Measurement Period and for data points that are within +/- 30% of the Reporting Condition Total Plane of Array Irradiance. Range of irradiance values which exceed Reporting Condition Total Plane of Array Irradiance +/- 30% will be excluded, unless poor testing conditions and schedule constraints require up to 50%.

"Reporting Conditions" – The Total Plane of Array Irradiance ($POA_{total}$), ambient temperature, and wind speed calculated by taking the median of the measured data set during the Performance Test Measurement Period will be used as the reporting conditions using the procedures outlined in general accordance with ASTM E2939 and this Exhibit F.

"Performance Test Measurement Period" – The period when the Performance Test is performed, which period shall be at least five (5) Days and shall continue for consecutive additional Days until the Minimum Data Points have been met, which may be up to a total of ten (10) days, depending on weather conditions during the test. If after ten (10) Days the Minimum Data Points have not been achieved, the data collected will be used provided at least 150 qualifying data points of five-minute duration have been collected. Notwithstanding the above, if the Parties mutually agree that a sufficient quantity of qualifying data points have been collected during a test to determine an accurate test result, the duration of the Test and the quantity of required qualifying data points required herein may be reduced.

"Performance Test Ratio"– The Test Rated Power divided by the Model Rated Power, calculated to the nearest 0.1%.

"Revenue Meter" – The revenue meter for the Project shall be the revenue grade Primary Metering Device installed at the high side of each GSU, or as otherwise mutually agreed by the Parties.

"Test Rated Power" – The value produced by the regression of filtered site measured power and site measured weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Test Rated Power of the Generating Facility shall account for losses to the Point of Delivery and shall be calculated using the procedures outlined herein.

"Total Plane of Array Irradiance ($E_{TOTAL}$)" – The sum total of the front plane of array irradiance and the rear plane of array irradiance multiplied by the Bifaciality Factor of the modules as shown in Equation 1 below. For Test Rated Power the $E_{REAR}$ will also be multiplied by the Rear Shading Factor defined in Table 2 of Appendix 2 to account for loss between the rear POA sensor and the module.

Equation 1:

$$E_{TOTAL} = E_{POA} + E_{REAR} * \varphi * R_{SH}$$

Where

$E_{POA}$ = Measured front side POA
$E_{REAR}$ = Measured rear side POA
$\varphi$ = Bifaciality Factor as defined on the manufacturer's datasheet
$R_{SH}$ = Rear shading factor

**Performance Test Procedure**

1. Battery system will be turned off over testing interval. In the event battery impacts performance or completion of test, parties will work in good faith to cease battery operations or modify procedure.
2. At least ninety (90) Days prior to the first day of the first Performance Test Measurement Period, a draft Performance Test Plan, including a detailed Performance Test Procedure shall be submitted to the Buyer by the Seller for Buyer's review and comment. The Performance Test Procedure shall:

    2.1. be in general accordance with ASTM E2848 and ASTM E2939 or other ASTM standards as mutually agreed by the Parties;
    2.2. include the PVSyst model to be utilized for determination of Model Rated Power. The PVSyst model for the Commissioning Performance Test shall result in a total Annual Generation Forecast that meets or exceeds the Annual Generation Forecast included in Exhibit L;
    2.3. include the 8760 generation forecast resulting from the PVSyst model, including the following columns;
        2.3.1. Date & Time (MM/DD/YYYY hh:mm)
        2.3.2. Plane-of-Array Irradiance Front (Globinc, W/m2)
        2.3.3. Plane of Array Irradiance Rear (GlobBak, W/m2)
        2.3.4. Module Temperature (TArray, °C)
        2.3.5. Ambient Temperature (TAmb, C)

2.3.6. Near Shadings Beam Loss (ShdBLss, W/m2)
2.3.7. Inverter Limitation due to Minimum Voltage (IL_Vmin, kW)
2.3.8. Inverter Limitation due to Maximum Power (IL_Pmax, kW)
2.3.9. Available Energy at Inverter Output (EOutlnv, kW)
2.3.10. Energy Injected into Grid (E_Grid, kWh)

2.4. include the linear regression coefficients for the full 8760 generation forecast; and

2.5. include a completed Appendix 2 of this Exhibit F, including the PVSyst model inputs and assumptions utilized in the PVSyst model.

Seller shall incorporate all of Buyer's reasonable comments into the final Performance Test Plan and Performance Test Procedure and resubmit the same for Buyer's confirmation of conformance with this Exhibit F and applicable ASTM standards (such approval not to be unreasonably withheld or delayed).

3. The Seller shall give written notice to the Buyer in accordance with Section 10.2 of this PPA for the Commissioning Performance Test and at least ten (10) Business Days prior to the start of any Annual Performance Test.
4. Seller shall perform the Performance Test in accordance with the final approved Performance Test Procedures described within this Exhibit F and any agreed modification thereof.
5. Performance Test Procedures shall identify the final Reporting Conditions and Model Rated Power using the Annual Performance Test PVSYST Model, and data filters described below.
6. The following input parameters shall be measured during the Performance Test (collectively, the "Input Parameters"):

- Front Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the front side of the PV array in the Project during the qualifying data points. Any significant shading during any aggregation interval is cause to exclude that data record from the regression.
- Rear Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the rear side of the PV array in the Project during the qualifying data points.
- Ambient Temperature: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit F.
- Wind Speed: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit F.
- Soiling: Soiling loss in the Annual Performance Test PVSYST Model shall utilize the lesser of (i) the measured value during the test, (ii) values measured on site from mutually agreed PV array samples or (iii) a value of 1.25% or otherwise as mutually agreed by the Parties.
- Revenue Meter Energy Generation: Energy as recorded by the Revenue Meter and accounting for losses to the Point of Delivery during the Performance Test Measurement Period.
- Inverter-Level Power Generation: AC output data for each inverter shall be provided for the purposes of identifying periods of inverter clipping.
- Inverter-Level Power Factor: Power factor output data for each inverter shall be provided

for the purposes of identifying periods of inverters performing outside of the designed power factor threshold.

7. During the Performance Test Measurement Period, irradiance, power generation and other data shall be reported at no greater than one (1) minute intervals, consisting of averaged sampled data. All data shall be reported in time-synchronized intervals.
8. Data shall be averaged and filtered in accordance with the procedures below:

    8.1. Missing Data: Missing records shall be marked as missing with a non-numeric identifier. Missing records shall not have a value included in the analysis but shall be documented. At least 50% of sensors for each measured parameter must be operational to consider data points as valid.

    8.2. DAS Equipment Malfunction: Data records with invalid Input Parameters (e.g. all sensor readings reported as out of range by the DAS) shall also be marked as invalid. If more than a few averaging intervals in a data collection period are affected by DAS errors or equipment malfunctions, Seller shall investigate and resolve this condition prior to proceeding with the test.

    8.3. Below Minimum Irradiance: To avoid large uncertainty in results due to increased impact of variable losses at low irradiance, all records with a minimum Total Plane-of-Array Irradiance input parameter of 200 $W/m^2$ or less shall be marked as irradiance too low and the data will not be used in the test. This shall be in addition to the ASTM2848-9.1.6 Irradiance Out of Range requirement.

    8.4. Unstable irradiance: Irradiance measurements shall be deemed stable if i) all individual sensor readings are within 10% of the average of all the sensor readings and ii) the average of all sensor readings is not more than 250 Watts per meter squared greater or less than the previous interval reading. If both conditions above are not met, the irradiance will be deemed unstable, flagged and the data will not be used in the test. This filter may be adjusted to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

    8.5. Inverter Clipping: Any intervals where the power output of one (or more) inverters is greater than 99.0% of the rated or programmed power limit. This data will be excluded from the test data.

    8.6. Meter Clipping: Any interval where the power output of the Revenue Meter is greater than 98.0% of the rated Electric Interconnection Point limit of the Project. This data will be excluded from the test data.

    8.7. Power Factor: Any intervals where the inverter power factor is less than ±0.95 will be excluded from the test data. This filter may be adjusted/removed to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

    8.8. Array shading by internal (array self-shading) or external (nearby objects). A schedule of expected shade times shall be defined in the Performance Test Procedures. This schedule may be altered during the Performance Test. Internal shading occurring during these shade intervals identified during testing shall be noted and considered as included in the design. Photographic evidence of array conditions shall be provided.

    8.9. Array shading by environmental conditions (e.g. frost, snow or debris). Onsite

observers shall record time intervals when such conditions exist as the Performance Test progresses. Photographic evidence of array conditions shall be provided and records occurring during these shade intervals identified during testing shall be marked as shaded and excluded from the test.

8.10. Wind Speed: Any intervals where average wind speed is greater than 15 meter per second, trackers go into a stow position or the panels are placed into hail stow due to a hailstorm will be excluded from the test data. This filter may be adjusted/removed to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

8.11. Any intervals impacted by system outages will be excluded from the test data including a) curtailment of the Project, b) shut down for maintenance, c) disconnection of the Project from the grid, d) power regulation by the grid operator, e) a Force Majeure Event, or f) any time when the Project is not (x) ninety percent (90%) available, if a Commissioning Performance Test, or (y) 100% available, if any other Performance Test.

9. Data will be collected until, at a minimum, the Minimum Data Points have been achieved.
10. Using the data filtering described herein, calculate the linear regression coefficients and Test Rated Power.
11. Only data from records where input parameters are valid and within specified limits shall be used in computing capacity estimates.
12. Calculate the Performance Test Ratio using the calculated Test Rated Power and appropriate Model Rated Power. For clarity, the Test Rated Power and Model Rated Power calculations are performed in accordance with ASTM E2848 guideline, however, all procedures outlined herein will take precedence over the ASTM E2848 guidelines.
13. Seller shall not apply test tolerances or measurement uncertainty to the test data or model results. Seller shall strive to minimize test tolerance and measurement uncertainty.
14. If the Performance Test Rating of the Project does not meet or exceed the Guaranteed Solar Capacity during the Commissioning Performance Test or the Annual Performance Test Guarantee during an Annual Performance Test, the Seller may re-conduct the test in accordance with Section 10.8(E) of the Agreement.

Restrictions and exclusions that prevent or inhibit performance or completion of a scheduled test, as outlined in this procedure (i.e. too low irradiance over the specified interval, too many excluded intervals) shall result in rescheduling of the applicable Performance Test.

The Performance Test Procedures provided by Seller to Buyer shall include (at a minimum) the following information:

- This test procedure
- Identification of key personnel and parties to be involved in the test
- The applicable Performance Test PVSYST Model
    - For the purposes of the Performance Test, the Annual Performance Test PVSYST Model shall include module/system Annual Degradation and assume 100% availability.
    - Meteorological data
- Identification of the Project under test (at a minimum)

  - Number and make/model of PV modules
  - Array orientation
  - Location (latitude, longitude, street address)
  - Racking type and tilt
  - Tracker range of motion (if applicable)
  - Number and make/model of Inverters
  - Row to row spacing (ground coverage ratio)
- Identification of all data points to be monitored during the test
- The starting and ending dates of the scheduled Performance Test Measurement Period.
- Table of all sensors and transducers to be used, including cut sheets, calibration records, map of sensor locations with sufficient detail to allow observers to locate the sensors and transducers. This includes sensors required for all applicable Input Parameters (MET station sensors, inverters, and Revenue Meter).
- Calibration records for all instrumentation, sensors, and transducers used for the test verifying that such calibration has been performed within twelve (12) months of the test or other such shorter period of time as may be recommended by the device manufacturer.
- All data identified in Appendix 2 to this Exhibit F.

Measured data is to be made available to the Buyer upon request during the Performance Test Measurement Period, for use in evaluating the progress of the Performance Test.

**Performance Test Report**
No later than fifteen (15) Business Days following the end of the Performance Test Measurement Period (as such may be repeated due to a re-test, if applicable), a Performance Test Report will be submitted to the Buyer by the Seller. Buyer shall have ten (10) Business Days to accept or reject the results of the Performance Test Report, and provide in writing any comments of Buyer on such Performance Test Report. In the event that Buyer rejects all or any part of the draft Performance Test Report, Seller shall, within five (5) Business Days thereafter address any comments of Buyer and re-submit the Performance Test Report to Buyer. This procedure shall continue until Buyer accepts the Performance Test Report. Any dispute regarding the results of the Performance Test or the Performance Test Report shall be resolved as indicated in the Agreement.

The Performance Test Report shall contain:

- The Performance Test Procedures, including all requirements as outlined herein.
- The actual start and end date/times of the Performance Test Measurement Period
- Parties present for the execution of the Performance Test
- Comments on environmental conditions during the Performance Test Measurement Period that affect the results of the test
- Performance model simulations, including all inputs, functional calculations and results
- Summary of test results
- Regression coefficients used to calculate Model Rated Power and Test Rated Power
- Comparison of test results with Annual Performance Test Guarantee.

All raw data used as input to the Performance Test shall be provided electronically (via CSV, XLS, or XLSX formats) to the Buyer with the Performance Test Report.

## Exhibit F - Appendix 1:
## Additional Requirements

### Sensor Requirements

Front plane of array irradiance sensors shall be at a minimum "High Quality" classified pyranometer(s) as defined in ASTM2848-A1.2 (Secondary Standard per ISO 9060). Pyranometers shall include device-specific characterization data that shall, at minimum, include cosine and temperature response. Alternative pyranometers may be used if necessary.

Pyranometers shall be used only within their valid calibration period and shall be cleaned at the start of the Performance Test Measurement Period and cleaned daily during the test if the Performance Test Measurement Period extends beyond one (1) week. Rear plane of array irradiance may be measured using either a high-quality reference cell (module) or a "High Quality" classified pyranometer(s) as defined in ASTM2848-A1.2 (Secondary Standard per ISO 9060).

| Measurement | Instrument Type | Test Function | Range | Accuracy |
|---|---|---|---|---|
| Plane of Array Irradiance | Front Facing Pyranometer Rear Facing Pyranometer | Primary for Performance Test | 0 to 1600 W/m$^2$ 285 to 2800 nm | ±2.0% daily |
| Global Horizontal Irradiance | Pyranometer | Tertiary for Performance Test | 0 to 1600 W/m$^2$ 285 to 2800 nm | ±2.0% daily |
| Ambient Air Temperature | Temperature Probe | Primary for Performance Test | -40°C to +60°C | ±1°C |
| Wind Speed | Sonic Wind Sensor | Primary for Performance Test | 0 – 60 m/s | ±5% |
| PV Plant Power | PV Power Revenue Meter | Primary for Performance Test | 0 to PV Power Plant size +20% | ANSI C-12.20 |
| Inverter Power | Inverter Meter | Primary for Performance Test | determined from inverter data sheet | determined from inverter data sheet |
| Soiling Loss | Soiling Stations <u>OR</u> In-Field IV Curve | Primary for Performance Test Secondary for Performance Test | 0 to 100% | |

### Multiple Measurements

Multiple Measurements shall be recorded for all environmental data throughout the Site in order to capture the operating conditions for all regions of the array.

Below are the main sensors to be used in the Performance Test:

- Front and rear plane of array irradiance (POA): Plane of Array readings shall be averaged from sensors installed.
- Ambient Air Temperature: Ambient temperature readings shall be averaged from sensors installed.

- Wind Speed: wind speed sensors shall be averaged from sensors installed.
- Soiling Station: At least four soiling stations, averaged readings will be used for multiple stations.
- Albedometer: At least four albedometers, averaged readings will be used for multiple sensors.
- Inverter Meter: The power and power factor reading for each inverter.
- PV Plant Meter: The power reading of the Revenue Meter.

## Exhibit F - Appendix 2:
## Performance Test PVSYST Model and
## Reporting Conditions Definition

### Performance Test PVSYST Model

The requirements for the Performance Test PVSYST Model to be used for evaluating the Test Rated Power is detailed in this Exhibit F. This section outlines all input parameters required to create the PVSYST simulation, in the event that PVSYST electronic project files are no longer available. This section shall be populated and submitted with the Performance Test Procedures.

The Performance Test PVSYST Model and the post-processed 8760 generation forecast accounting for any losses outside of the model shall be included within this Exhibit F. Post-processed losses shall be specifically identified in the 8760 forecast.

For Annual Performance Tests, the Performance Test PVSYST Model will be updated to the Annual Performance Test PVSYST Model prior to running the Performance Test to include the Annual Degradation.

### PVSYST Model Files

Table 2-1 below provides the file names for all model files necessary to run the PVSYST simulation in the PVSYST version specified in the subsequent section. Seller shall provide all Annual Performance Test PVSYST Model files to the Buyer including all files required to recreate the PVSYST modeling files including .ond, .pan, .shd, .met, .prj and .vc files. The PVSYST version, report, and output 8760 based on the specified TMY Meteorological data source shall be provided.

Table 2-1: PVSYST File Names

| PVSYST File Type | File Name |
|---|---|
| Project | To be provided |
| Variant 1 | To be provided; aligns with primary module |
| Variant 2 | To be provided; aligns with secondary module |
| Site | To be provided |
| Meteorological | To be provided |
| Panel | To be provided |
| Inverter | To be provided |

### PVSYST Input Parameters

This section documents all PVSYST inputs and assumptions. Table 2-2 below provides many of the PVSYST inputs required in the simulation.

Sixty (60) Days prior to performance testing of any portion of the solar project, the corresponding PVSyst model and inputs with the resultant 8760 generation forecast shall be submitted with the test procedure for Buyer review. Testing and approval for Commercial Operation will require that a PVSyst model and associated inputs and results be provided that represents the capability to fulfill a minimum total annual generation of [*] GWh per year (as identified in Exhibit L) on a P50 probability basis as adjusted year over year for any applicable degradation.

Seller shall provide justification and supporting documentation for all of the circuit ohmic losses, inverter losses, transformer losses, and auxiliary loads identified in Table 2-2.

**Table 2-2: PVSYST Input Parameters**

| **Input Parameter** | **Value** | **Comment** |
|---|---|---|
| PVSYST Software Version | | |
| Transposition Model | | |
| Meteorological File | | |
| Latitude / Longitude | | |
| Altitude [m] | | |
| Array Orientation (PVSYST Field Type) | | |
| Tilt | | |
| Azimuth | | 0° is due South |
| Tracker Backtracking | | |
| Min / Max Rotation Angle | | |
| Number of sheds | | |
| Ground Cover Ratio (GCR) | | |
| Pitch [m] | | |
| Primary Module | | |
| Secondary Module | | |
| Collector width [m] | | |
| Primary Module | | |
| Secondary Module | | |
| Inactive band, Left (m) | | |
| Inactive band, Right (m) | | |
| Near Shading Type | | |
| Electrical Effect | | |
| Number of strings in row width | | |
| Horizon | | |
| Module Type | | |
| Primary Module | | x% primary module |
| Secondary Module | | y% secondary module |

| **Input Parameter** | **Value** | **Comment** |
|---|---|---|
| Qty. of modules | | |
| Primary Module | | |
| Secondary Module | | |
| Qty. of modules per string | | |
| Primary Module | | |
| Secondary Module | | |
| Qty. of parallel strings | | |
| Primary Module | | |
| Secondary Module | | |
| Inverter Type | | |
| Qty. of inverters | | |
| Inverter Loss | | |
| Heat Transfer: Constant loss factor | | |
| Heat Transfer: Wind loss factor | | |
| DC circuit ohmic loss at STC | | |
| Module Bifaciality Factor | | From datasheet (not PAN file) |
| Primary Module | | |
| Secondary Module | | |
| Module Quality | | |
| Primary Module | | |
| Secondary Module | | |
| Mismatch [%] | | |
| Primary Module | | |
| Secondary Module | | |
| LID – Light Induced Degradation [%] | | |
| Primary Module | | |
| Secondary Module | | |
| Soiling Loss [%] | | |
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |

| **Input Parameter** | **Value** | **Comment** |
|---|---|---|
| September | | |
| October | | |
| November | | |
| December | | |
| Annual Average | | |
| Incidence Angle Modifier Factors or ASHRAE b0 value | | |
| Rear Transparency | | |
| Primary Module | | |
| Secondary Module | | |
| Rear Shade Loss | | |
| Primary Module | | |
| Secondary Module | | |
| Rear Mismatch | | |
| Primary Module | | |
| Secondary Module | | |
| Module Mounting Height | | |
| Monthly Surface Albedo | | |
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |
| Annual Average | | |
| Auxiliary Loads [%] | | |
| Nighttime Loads [%] | | |
| AC circuit ohmic loss at STC [%] | | |
| AC circuit MV ohmic loss at STC | | |
| External MV Transformer No Load Loss [%] | | |
| External MV Transformer Full Load Loss [%] | | |

| Input Parameter | Value | Comment |
|---|---|---|
| AC circuit HV ohmic loss at STC | | |
| Terrain Loss [%] | | |
| External HV Transformer No Load Loss [%] | | |
| External HV Transformer Full Load Loss [%] | | |

**Additional Losses (Post-Processed Loss)**
There are multiple losses associated with an operating Project that may not be accounted for in PVSYST. Auxiliary load consumption shall be separately accounted for in the test results. Treatment of any additional adjustments impacting the Primary Metering Device in the event they impact the overall results of the test shall be as mutually agreed by the Parties.

**Reporting Conditions Identification**
The Reporting Conditions are to be specified based on the measured data set. The following procedure is recommended for identifying Reporting Conditions.

1. The Reporting Conditions shall be determined based on the measured data set. Data records shall include the measured Total Plane of Array irradiance ($E_{Total}$), ambient temperature and wind speed input parameters, as well as any auxiliary parameters necessary for marking data records according to the primary data exclusion criteria.
2. Apply the primary data exclusion criteria identified in Section 8 of this Exhibit F to the measured data records.
3. Grouping the remaining data records, compute the median values of $E_{total}$, ambient air temperature, and wind speed. The reporting condition for $E_{total}$ irradiance shall not be less than 500 W/m², unless otherwise agreed to by the Parties.
4. Round median $E_{total}$ irradiance to the nearest integer W/m², median temperature to the nearest °C, and median wind speed to the nearest 0.1 m/s. The calculated values represent the Reporting Conditions.

**Model Rated Power Identification**
The Model Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure shall be used by the Seller to calculate the Model Rated Power values.

1. To Calculate the Model Rated Power value, update and verify the applicable Performance Test PVSYST Model includes the following parameters:
   a. Availability and Curtailment Losses shall be assumed 0%
   b. Update soiling and albedo values
   c. Calculate Annual Degradation (for Annual Performance Tests)
2. The Performance Test PVSYST Model hourly output, after post-processing, must contain at a minimum the plane of array irradiance, the ambient temperature, wind speed, inverter

energy output, modeled power generation, shade loss, and clipping loss (GlobInc, Globbak, TAmb, WindVel, EOutInv, Egrid, POI Limited, ShdBLss, and IL Pmax) respectively. For clarity:

$$\text{Model } E_{total} = \text{GlobInc} + \text{Globbak}*BF$$

BF = Module Bifaciality Factor of the bifacial modules used in the Performance Test

3. Procure data records from the Performance Test PVSYST Model.
4. For Annual Performance Tests, adjust total generation output from the Performance Test PVSYST Model to account for the Annual Degradation by multiplying all positive generation intervals by one minus the Annual Degradation.
5. Apply the data exclusion criteria identified in Section 8 of this Exhibit F to the simulation data records.
6. Calculate the regression coefficients for the Performance Test Measurement Period from filtered data with a Total Plane of Array Irradiance within +/-30% of the Total Plane of Array Irradiance Reporting Condition.
7. Calculate Model Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation below:

$$P_{RC} = E_{RC}(a_1 + a_2 \cdot E_{RC} + a_3 \cdot T_{RC} + a_4 \cdot v_{RC})$$

Where:

$P_{RC}$ = Rated Power
$E_{RC}$ = Total Plane of Array Irradiance Reporting Condition
$T_{RC}$ = Temperature Reporting Condition
$v_{RC}$ = Wind Speed Reporting Condition
a1 to a4 = Regression coefficients

**Test Rated Power Identification**

The Test Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure will be used by the Seller to calculate the Test Rated Power values.

1. Procure measured data records including the meter output and inverter output data
2. Calculate the Test $E_{TOTAL}$

$$\text{Test } E_{total} = \text{GlobInc} + \text{Globbak}*BF*\text{RearShade}$$

3. Apply the data exclusion criteria identified in Section 8 of this Exhibit F to the measured data records.
4. Compute regression coefficients for the Performance Test Measurement Period.
5. Calculate the Test Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation.

**Exhibit F-Appendix 3: PVsyst – Simulation Report**

**To be provided.**

**EXHIBIT G-1**
(to Power Purchase Agreement)
**INSURANCE COVERAGES**

Seller shall obtain and maintain the following insurance coverages, at a minimum:

**A.** **Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B.** **Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

**C.** **Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

**D.** **Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E.** **Network Security and Privacy Liability**. Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

**F.** **Property Insurance**. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance in the amount of Two Hundred Million Dollars ($200,000,000). Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

**EXHIBIT G-2**
(to Power Purchase Agreement)

**FORM OF ATTESTATION AND BILL OF SALE**

Pursuant to WREGIS, _____ ("Seller") hereby sells, transfers and delivers to Buyer the RECs and Environmental Attributes associated with the generation of Energy at the Project, as detailed in the Power Purchase Agreement between the Parties dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

_____
Name of Renewable Energy Facility

| Fuel Type | Maximum Power Output (MW) | Operation Date |
|---|---|---|
| Dates | | MWh generated |
| _____, 20___ | | _____ |

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents as follows:

1. to the best of its knowledge, the information provided herein is true and correct;

2. its sale to Buyer is its one and only sale of the RECS and Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such RECS and Environmental Attributes;

3. the Project identified above produced the number of MWh above during the period indicated above;

4. Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and

5. Seller owns the _____.
Name of the Renewable Energy Facility

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the above referenced Energy.

Contact Person: _____
Phone: _____; Fax: _____

[Seller]

Signed: _____
Name: _____
Title: _____
Date: _____

**EXHIBIT H**
(to Power Purchase Agreement)

**AVAILABILITY GUARANTEE**

**Section 1. Definitions.**

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the PPA.

"**Actual Solar Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Solar Available Hours for all Solar Units that were part of the Project at the beginning of the relevant Commercial Operation Year for all Daylight Intervals, divided by (ii) the sum of all Solar Period Hours in the relevant Commercial Operation Year for all Solar Units that were part of the Project on the Commercial Operation Date.

"**Actual Solar Energy Output**" means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

"**Aggregate Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Report**" has the meaning set forth in Section 2(5) of this Exhibit.

"**Daylight Interval**" means each hour where plane of array irradiance conditions are 50 W/m2 or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

"**Guaranteed Solar Availability Percentage**" has the meaning set forth in Section 2(1) of this Exhibit.

"**Solar Availability Damages**" has the meaning set forth in Section 2(2) of this Exhibit H.

"**Solar Availability Guarantee**" means the guarantee set forth in Section 2(1) of this Exhibit H.

"**Solar Available Hours**" means for each Solar Unit, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Solar Period Hours in such Commercial Operation Year, minus (b) the aggregate Solar Unavailable Hours for such Solar Unit in such Commercial Operation Year, plus (c) the aggregate Solar Excused Hours for such Solar Unit in such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity of the Solar

Unit.

"**Solar Excused Hours**" means, in any Commercial Operation Year, the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity of the Solar Unit.

"**Solar Period Hours**" means the number of Daylight Intervals within any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

"**Solar Unavailable Hours**" means those hours a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; (c) included in Scheduled Maintenance Outages; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Energy to the Point of Delivery. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour a Solar Unit is unavailable, but for less than the full amount of its installed capacity, the Solar Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

**Section 2. Solar Availability Guarantee.**

1. Solar Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Availability Percentage (i) equal to or greater than eighty-five percent (85%) averaged through the second full Commercial Operation Year of the Term and (ii) equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date ("**Guaranteed Solar Availability Percentage**").

2. Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed Solar Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Guaranteed Solar Availability Percentage minus the Actual Solar Availability Percentage for such Commercial Operation Year (both expressed as a decimal), multiplied by (z) the Actual Solar Energy Output for such Commercial Operation Year divided by the Actual Solar Availability Percentage (expressed as a decimal), multiplied by the Guaranteed Solar Availability Percentage (expressed as a decimal) (the "**Solar Availability Damages**"), but in no event in excess of the Annual Solar Availability Damages Cap and the Aggregate Solar Availability Damages Cap. A sample calculation of the Solar Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Sixty Thousand Dollars ($60,000) per MW of Guaranteed Solar Capacity ("**Annual Solar Availability Damages Cap**") and in the aggregate at a value equivalent to One Hundred Fifty Thousand Dollars ($150,000) per MW of Guaranteed Solar Capacity ("**Aggregate Solar Availability Damages Cap**") over the Term of the PPA.

4. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed Solar Availability Percentage shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Section 12.1(B)(8) and (9) of the PPA, if and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail to meet the Guaranteed Solar Availability Percentage.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the PPA.

## ATTACHMENT 1 TO EXHIBIT H

## EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES

### I. Example of Actual Solar Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 50 Solar Units were part of the Project.

The Solar Units had the following operating characteristics:

| | | Hours | Solar Units Affected | Solar Unit Hours |
|---|---|---|---|---|
| | Solar Period Hours ("PH") | 4,000 | 50 | 200,000 |
| | Solar Unavailable Hours ("UH") | | | 5,000 |
| | Solar Excused Hours ("EH") | | | 1,000 |

Given these assumed facts, the Solar Available Hours for the Solar Units during the Commercial Operation Year would be calculated as follows:

Sum of Solar Available Hours = PH – (UH + EH): 196,000 = 200,000 – 5,000 + 1,000

**Actual Solar Energy Availability Percentage**

Given these assumed facts, the Actual Solar Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

(a) Sum of Solar Available Hours: 196,000 hours
(b) Sum of Solar Period Hours: 200,000 hours
(c) Actual Solar Availability Percentage: (Sum of Solar Available Hours/Sum of Solar Period Hours) x 100 = (196,000/200,000) x 100 = 98.0%

### II. Example of Availability Damages

(a) Example of Solar Availability Damages based on the following assumed facts:
(b) Seller's Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.
(c) Seller's Actual Solar Availability in Commercial Operation Year 4 = 85%.
(d) Solar Energy Output Payment Rate = $20.00
(e) Actual Solar Energy Output = 130,000 MWh

Given these assumed facts, Seller calculates the Solar Availability Damages due to Buyer as follows:

Solar Energy Output Payment Rate x (Guaranteed Solar Availability Percentage in Commercial Operation Year 4 — Actual Solar Availability Percentage for Commercial Operation Year 4 (each expressed as a decimal)) x (Actual Solar Energy Output for Commercial Operation Year 4 ÷ Actual Solar Availability Percentage for Commercial Operation Year 4 x Guaranteed Solar Availability Percentage for Commercial Operation Year 4 (the latter two expressed as a decimal)) = Solar Availability Damage:

$20.00 x (.90 - .85) x (130,000 ÷ .85 * .90) = $137,647.06

**EXHIBIT I**

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"),is made by [●] ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

**1.** **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder.

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and

enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty if a court of competent jurisdiction finally declares that amounts are due and payable hereunder (subject, in all instances other than reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees)), to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

**2. DEMANDS AND PAYMENT**.

(a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

(b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty.

(c) After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State Florida or the State of New York.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and

(c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be

limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4.** **RESERVATION OF CERTAIN DEFENSES.** Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**5.** **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6.** **WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with

respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

(d) Guarantor hereby waives any right to assert against Counterparty as a defense, counterclaim, set-off or crossclaim, any defense (legal or equitable), counterclaim, set-off, crossclaim and/or other claim which Guarantor may now or at any time hereafter have against Obligor or any other party liable to Counterparty in any way or manner. Guarantor further waives any right to assert against Counterparty any claim or defense based upon an election of remedies by Counterparty that impairs, releases or extinguishes Guarantor's subrogation rights or any other right to proceed against Obligor or against any other person or property.

**7.** **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

**8.** **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement, and (ii) 11:59:59 Eastern Prevailing Time of [[__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

**9.** **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

| *TO GUARANTOR: ** | *TO COUNTERPARTY:* |
|---|---|
| [●]<br>*Attn:* Treasurer | *Attn:* [●] |
| *[Tel:* [●] -- *for use in connection with courier deliveries]* | *[Tel:* [●]<br>-- *for use in connection with courier deliveries]* |

* (NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. [●] and ATTN: Credit Department, Fax No. [●]. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)

Any Notice given in accordance with this *Section 9* will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10.** **MISCELLANEOUS**.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and

understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) Counterparty and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the state and federal courts in Albuquerque, New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

(h) Delivery of an executed signature page of this Guaranty, and any subsequent amendment(s), by facsimile or email shall be effective as delivery of a manually executed counterpart hereof. The words "execute,", "execution,", "signed,", "signature," and words of similar import in this Guaranty shall be deemed to include electronic signatures or digital signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000,

the Electronic Signatures and Records Act of 1999, or any other similar state laws based on the Uniform Electronic Transactions Act.

**11.** **THIRD PARTY BENEFICIARY RIGHTS.** This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[●]
By: _____

Name: _____

Title: _____

**EXHIBIT J**
(to Power Purchase Agreement)

**COMMERCIAL OPERATION**
**FORM OF CERTIFICATION**

This certification ("**Certification**") of Commercial Operation is delivered by Windy Lane Energy Center, LLC ("**Seller**") to Public Service Company of New Mexico ("**Buyer**") in accordance with the terms of that certain Power Purchase Agreement dated June 6, 2025 ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Solar Units with an aggregate capacity of at least 90 MW have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed Capacity and punch list items that do not adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Solar Energy Output and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

| Windy Lane Energy Center, LLC | **[Licensed Professional Engineer]** |
|---|---|
| Signature: _____ | Signature: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| | Date: _____ |
| | License Number and LPE Stamp: _____ |

**EXHIBIT K**
(to Power Purchase Agreement)

## ANNUAL DEGRADATION GUARANTEES

| **Test at Beginning of Commercial Operation Year** | **Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity)** | **Maximum % Degradation from Prior Year Actual Degradation** |
|---|---|---|
| 1 - Commissioning Test | 100.00% | 0.00% |
| 2 | 99.50% | 0.50% |
| 3 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 0.50%) and 0.50% or (ii) 99.00% | 0.50% |
| 4 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 1.00%) and 0.50% or (ii) 98.50% | 0.50% |
| 5 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 1.50%) and 0.50% or (ii) 98.00% | 0.50% |
| 6 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 2.00%) and 0.50% or (ii) 97.50% | 0.50% |
| 7 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 2.50%) and 0.50% or (ii) 97.00% | 0.50% |
| 8 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 3.00%) and 0.50% or (ii) 96.50% | 0.50% |
| 9 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 3.50%) and 0.50% or (ii) 96.00% | 0.50% |
| 10 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 4.00%) and 0.50% or (ii) 95.50% | 0.50% |
| 11 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 4.50%) and 0.50% or (ii) 95.00% | 0.50% |

| | | |
|---|---|---|
| 12 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 5.00%) and 0.50% or (ii) 94.50% | 0.50% |
| 13 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 5.50%) and 0.50% or (ii) 94.00% | 0.50% |
| 14 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 6.00%) and 0.50% or (ii) 93.50% | 0.50% |
| 15 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 6.50%) and 0.50% or (ii) 93.00% | 0.50% |
| 16 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 7.00%) and 0.50% or (ii) 92.50% | 0.50% |
| 17 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 7.50%) and 0.50% or (ii) 92.00% | 0.50% |
| 18 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 8.00%) and 0.50% or (ii) 91.50% | 0.50% |
| 19 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 8.50%) and 0.50% or (ii) 91.00% | 0.50% |
| 20 | The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 9.00%) and 0.50% or (ii) 90.50% | 0.50% |

**EXHIBIT L**
(to Power Purchase Agreement)

**ANNUAL GENERATION FORECAST**

The following represents the annual P50 forecast of net, AC generation delivered to the Point of Delivery.

On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

| Month | On-Peak Energy Delivered (MWh) | Off-Peak Energy Delivered (MWh) |
|---|---|---|
| January | 8,535 | 1,668 |
| February | 11,841 | 1,772 |
| March | 13,080 | 2,259 |
| April | 16,221 | 2,359 |
| May | 16,699 | 2,795 |
| June | 22,964 | 3,608 |
| July | 21,083 | 5,604 |
| August | 18,354 | 2,236 |
| September | 15,753 | 3,424 |
| October | 12,971 | 2,377 |
| November | 8,468 | 1,938 |
| December | 6,886 | 1,266 |
| Total Annual | 172,856 | 31,306 |
| Total Combined Annual | 204,163 | |
| | | |
| Annual Capacity Factor | 25.9% | |

**EXHIBIT M**
(to Power Purchase Agreement)

**PPA FUNCTIONAL MAPPING**

The Project's NERC verified PPA Generator Owner, PPA Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

| | Entity Name | Point of Contact | E-mail | Phone |
|---|---|---|---|---|
| Generator Owner (GO) | | | | |
| Generator Operator (GOP) | | | | |
| Scheduling Coordinator Contact (SCC) | | | | |

**EXHIBIT N**
(to Power Purchase Agreement)

**EXAMPLE INTERCONNECTION METERING DIAGRAM**

*[To be provided.]*

# EXHIBIT O
(to Power Purchase Agreement)

## COMMISSIONING AND TESTING PROCESS

**Section 1. Purpose.**

This Exhibit O provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the PPA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Diagram as outlined in Exhibit N of the PPA and complete all testing as defined in Exhibit F of the PPA.

**Section 2. Identifying Key Points of Contact.**

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the PPA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

**TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.**

| CONTACT | Company | Group | Address | Project Role | Office Phone | Mobile Phone | E-MAIL |
|---|---|---|---|---|---|---|---|
| (name) | PNM | Generation Engineering | 2401 Aztec Rd NE Albuquerque, NM 87107 | Contract Manager | 505-241-XXXX | 505-241-XXXX | …@pnm.com |

The POC List shall identify, but not be limited to, the following:

**Buyer Team:** Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.
- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.
- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.
- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect ("**PCI**") modeling for functionality required for the participating resource schedule coordination ("**PRSC**") (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.
- Power Operations, "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

**Seller Team:** The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- Project Manager – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the generation systems. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.
- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.
- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:
    - Balancing Area Authority (BAA)
    - Transmission Owner (TO)
    - Transmission Operator (TOP)
    - Generator Owner (GO)
    - Generator Operator (GOP)

- Scheduling Coordinator (SC)
- Distribution System Operator (DSO)

**Section 3. Process Overview.**

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

**Section 3.1 Commissioning Kickoff Meeting.**

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A. This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

**Section 3.2 Pre-Commissioning.**

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

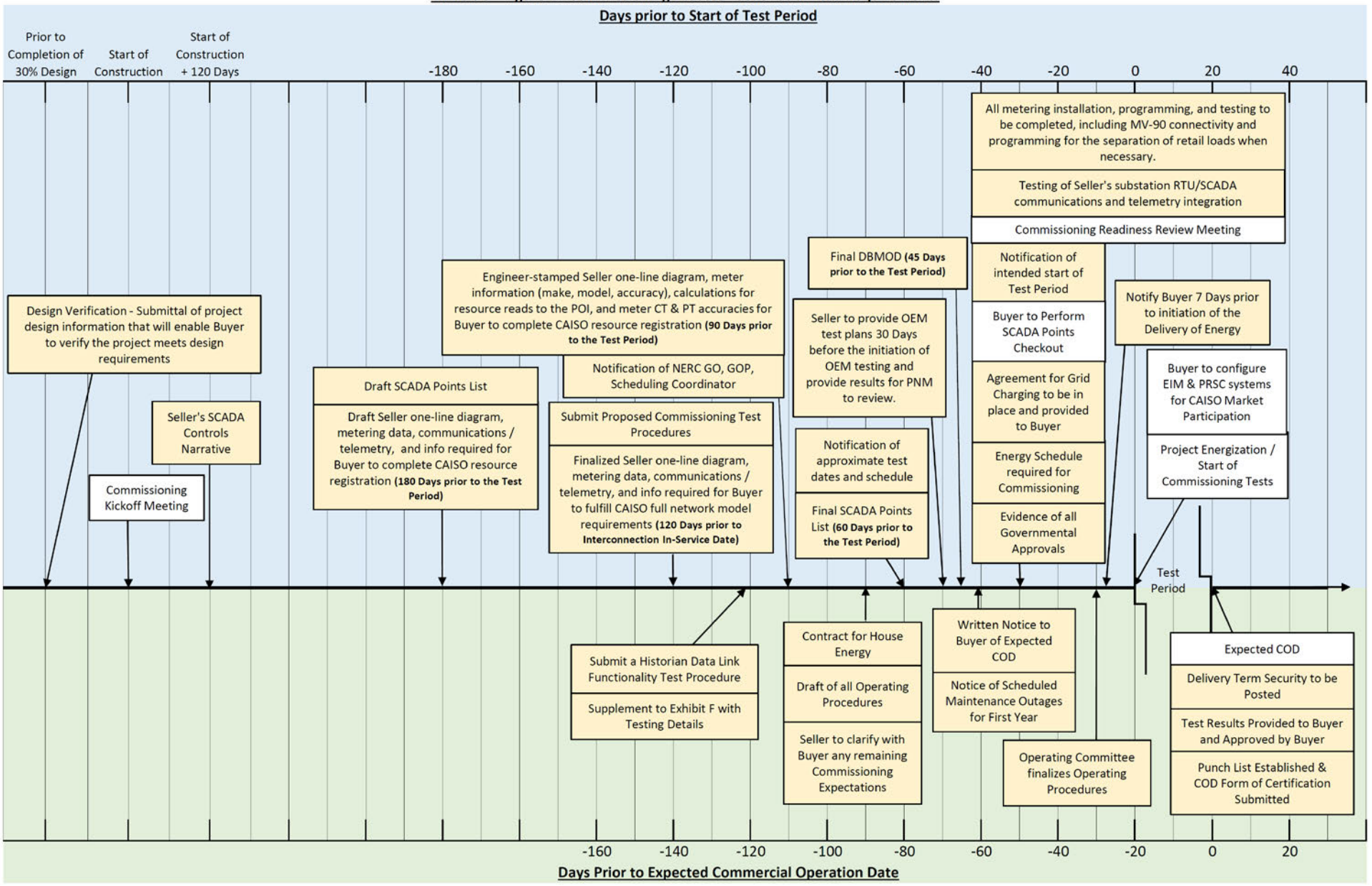
Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1 (Table 2 to prevail over any inconsistency with Figure 1):

## TABLE 2: PRE-COMMISSIONING REQUIREMENTS

| Requirement | Description | Responsible Party | Contributor(s) | Timeline |
|---|---|---|---|---|
| **Design Verification** | Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving PPA obligations, including metering, etc. | **Seller** | Generation Engineering | After completion of 30% design phase of project |
| **Seller's SCADA Controls Narrative** | Controls narrative detailing items related to SCADA and telemetry planning. | **Seller** | PowerOps | 120 Days after Start of Construction |
| | Final DB Mod file delivered to PowerOps. | **Seller** | PowerOps | 45 Days prior to the scheduled Test Period |
| **Seller's Substation Commissioning** | Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled generation resource performance testing. | **Seller** | Buyer's Project Manager | 30 Days prior to the scheduled Test Period |
| **Metering** | All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Diagram in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary. | **Seller** | PowerOps | 30 Days prior to the scheduled Test Period |
| **CAISO Resource Registration** | Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration. | **Seller** | PowerOps | 180 Days prior to the scheduled Test Period |
| | A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. Delays in Seller's submission to Buyer of this information will likely result in a delay in the transmission interconnection in-service date. | **Seller** | PowerOps | 120 Days prior to transmission interconnection in-service date |
| | PNM EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps. | **PowerOps** | Seller | |
| | Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter. | **Seller** | PowerOps | No later than 90 Days prior to the scheduled Test Period |
| **Power Operations Engineering Requirements for Commissioning** (Attachment 1) | This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. | **PowerOps** | Seller | SCADA Points Check Out: PowerOps will conduct a checkout 30 Days prior to the beginning of the scheduled Test Period. |
| **Power Operations & WPM Systems configuration** | EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent generation resources for CAISO market participation. | **PowerOps & WPM IT Support** | Seller | Prior to the beginning of the scheduled Test Period |
| **Operating Procedure** | Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering. | **Seller** | PowerOps | 90 Days prior to the Commercial Operation Date |
| | An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system. | **Seller/Buyer** | Seller / PowerOps / Generation Engineering | 30 Days prior to the Commercial Operation Date |
| **OEM Test Plan** | The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide Buyer with a certificate from an officer certifying that the testing required under the supply agreement with OEM was satisfactorily conducted. | **Seller** | Generation Engineering | All OEM related testing must be completed prior to declaring COD; Seller's officer certification may be included in the certification required by clause (g) of Commercial Operation. |

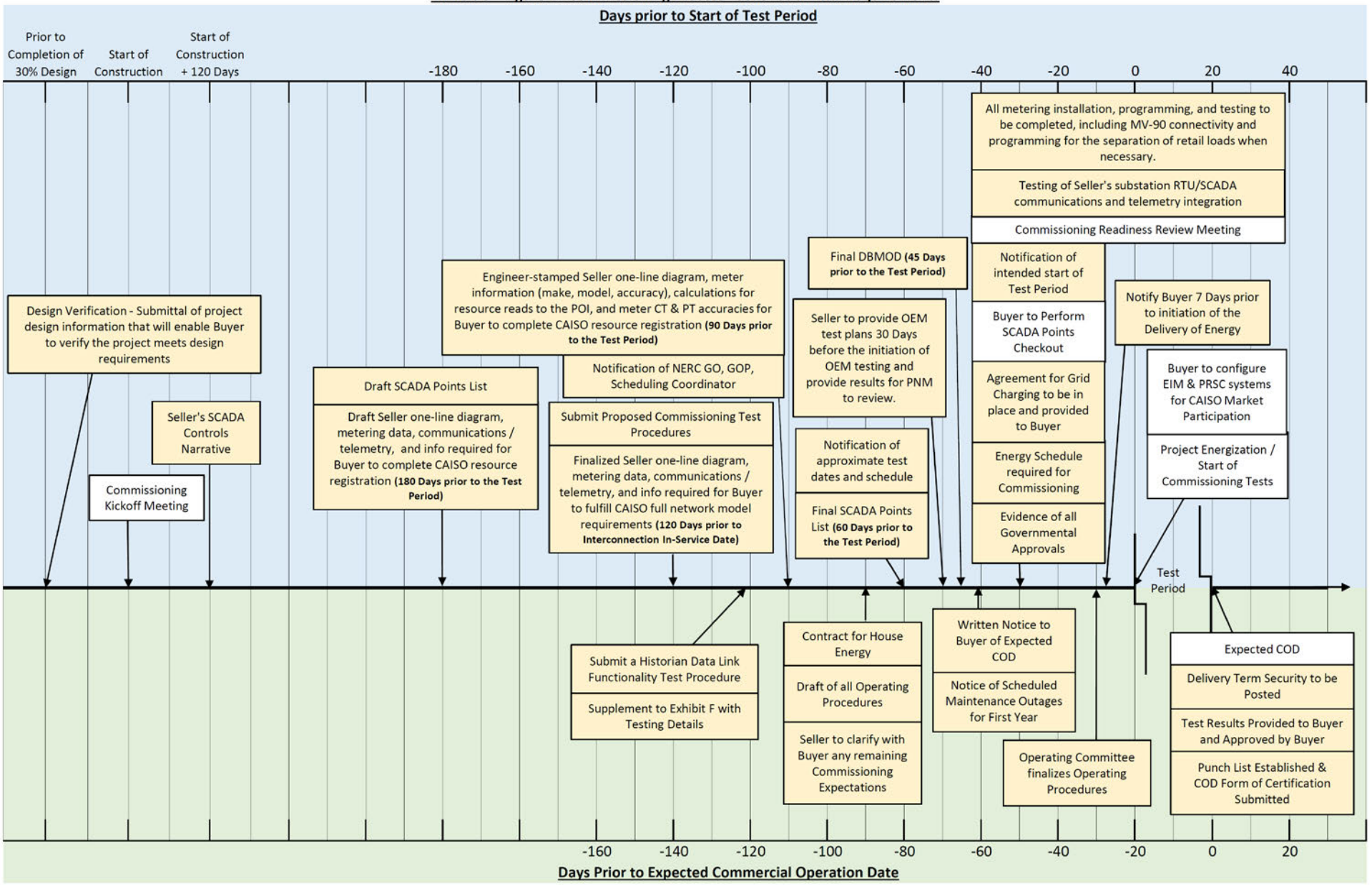
| Requirement | Description | Responsible Party | Contributor(s) | Timeline |
|---|---|---|---|---|
| **Test Energy Plan & Schedule** | Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated PPA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans. | **Seller** | Generation Engineering | Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period. |
| **Commissioning Readiness Review Meeting** | Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in:<br>Attachment 2: Commissioning Readiness Review | **Generation Engineering** | Seller, PowerOps | 30 Days prior to the beginning of the scheduled Test Period |

**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

**Section 3.3 Commissioning.**

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the PPA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.
- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Buyer Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the PPA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

For Seller's commissioning activities that require Buyer scheduling of energy delivery, Seller's failure to advise Buyer of any change to the planned timing of commissioning activities prior to 48 hours in advance of the change may result in an inability of Seller to conduct testing. Any such delay in commissioning activities as a result of late notification will be to Seller's account.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

**Section 3.4 Final Requirements Prior to COD.**

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

## ATTACHMENT 1 TO EXHIBIT O

## BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer 90 Days prior to the beginning of the Test Period:
    a. Nameplate values: MW, MWh, round trip efficiency, etc.
    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.
    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.
    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.
    d. Telemetry for Seller's substation awareness shall include:
        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - Generation resource total gross values and total net values (in both MW and MVAr)
                - Gross and net values shall be provided for each resource registered with CAISO
            - Point of Delivery values – MW, MVAr
            - AGC setpoints for generation resource and voltage setpoint. As well as the feedback for those setpoints.
            - Total real power target
    e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. DERMS Workbook inputs:

a. Seller shall provide required information for the DERMS, including:
    - SCADA keys, resource characteristics, meteorology, etc.
    - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

## ATTACHMENT 2 TO EXHIBIT O

## COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. Confirmation that everything is in place to begin testing.
    a. The configuration of the system is stabilized.
    b. All planned preliminary, informal, functional, unit level, subsystem, system, and qualification tests have been conducted with satisfactory results.
    c. Any deficiencies detected in the system have been addressed.
5. The expected result and how might the test evaluation results affect the program.
6. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
7. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and operational testers prior to any test using personnel.
8. The fallback plan should a technical issue or potential showstopper arise during testing.
    a. The test director that will decide if an issue is a showstopper.
9. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

# EXHIBIT P

## FORM OF LENDER CONSENT

## CONSENT AND AGREEMENT

This Consent and Agreement (this "***Consent***") is made and entered into as of ___ _, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

## RECITALS

Windy Lane Energy Center, LLC ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of a photovoltaic solar electric energy generating facility owned by Seller and located in De Baca County, New Mexico (the "***Solar Project***").

Seller and Buyer have entered into that certain Power Purchase Agreement, dated as of June 6, 2025 (as amended, restated, supplemented or otherwise modified from time to time, the "***PPA***"), relating to the energy generated by the Solar Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the PPA (the "***Pledged PPA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

## AGREEMENTS

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged PPA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged PPA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of solar energy facilities of comparable size to the Solar Project and the ability perform all aspects of the PPA; (d) has agreed in writing to be bound by the PPA and to assume all of Seller's obligations under the PPA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged PPA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller

meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of and after the date of assignment, the Facility Development Security Amount or the Operational Security, as applicable, and (iii) Buyer has not terminated this PPA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged PPA (a "*Subsequent Seller*"), may be substituted for Seller under the PPA and Buyer shall recognize such Subsequent Seller as its counterparty under the PPA and, subject to all rights and remedies of Buyer under the PPA, continue to perform its obligations under the PPA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the PPA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the PPA. The transfer of the PPA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the PPA, Lender may cure such default by the deadline provided therefor in the PPA. Buyer will not terminate the PPA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the PPA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the PPA, (b) with respect to a default under Section 12.1(B)(8) or 22.21(A),(B),(C) or (E) of the Agreement, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the PPA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the PPA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the PPA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Solar Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. PPA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the PPA; provided that notwithstanding the foregoing, Buyer may terminate the PPA without Lender consent due to an

uncured Event of Default under the PPA after the expiration of Lender's rights to cure under Section 4 hereof.

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the PPA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the PPA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA.

8. Replacement Agreement. If the PPA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the PPA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the PPA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the PPA (other than the bankruptcy of Seller or a transfer of the Solar

Project to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 9.2 (Seller Permitted Assignment) of the PPA).

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS

BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the PPA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the PPA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

**[BUYER]**

By: _____
Name:_____
Title:_____

**[LENDER]**

By _____
Its _____

ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the PPA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the PPA, as and when required under the PPA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the PPA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the PPA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the PPA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the PPA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the PPA. Seller shall have no rights against Buyer, under the PPA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

## EXHIBIT Q

### Form of Estoppel Certificate

### ESTOPPEL CERTIFICATE

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Power Purchase Agreement, dated as of _____ (the "***PPA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a solar energy generating facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the PPA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the PPA have been duly authorized by all necessary action on the part of Buyer, (ii) the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the PPA, Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

[BUYER]

By: _____
Name:_____
Title:_____

Four Mile Mesa Energy Storage Agreement

# PNM Exhibit GBB-5

Is contained in the following 149 pages.

CONFIDENTIAL

# ENERGY STORAGE AGREEMENT— FOUR MILE MESA

**by and between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**FOUR MILE MESA STORAGE, LLC**

**Dated as of May 29, 2025**

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# ENERGY STORAGE AGREEMENT

This Energy Storage Agreement, as may be amended from time to time, is entered into this 29th Day of May, 2025 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Four Mile Mesa Storage, LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 575 Fifth Avenue, Floor 24, New York, NY 10017. Buyer and Seller may be referred to in this ESA individually as a "**Party**" and collectively as the "Parties."

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission;

WHEREAS, Seller desires to develop, design, construct, own and operate an energy storage facility, as further defined herein and in Exhibit A; and

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (as amended from time to time, **Special Service Contract**"), between Buyer and Greater Kudu LLC. ("**Retail Customer**"), as amended from time to time, Buyer has agreed, by entering into this ESA, to procure the Product from the Project to serve Retail Customer's load; and

WHEREAS, Seller desires to sell and deliver to Buyer the Product (as defined herein) from the Project, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

## ARTICLE 1
## Definitions and Rules of Interpretation

1.1 Definitions. The following terms have the meanings set forth herein.

"**Abandonment**" means (a) prior to the Commercial Operation Date, a cessation of work and operations at or in respect of the Project for more than ninety (90) consecutive Days by Seller or Seller's contractors but only if such cessation is not in accordance with Prudent Utility Practices, caused by a Force Majeure Event, caused by Buyer Event of Default or is not in accordance with Seller's Project Schedule, or (b) after the Commercial Operation Date, the permanent relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this ESA.

"**AC**" means alternating electric current.

"**Accounting Standards**" has the meaning set forth in Section 22.18.

"**Actual Charge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual Discharge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual System Latency Delay**" has the meaning set forth in Exhibit F.

"**Additional Consents**" means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this ESA that are required from any Governmental Authority with respect to the Project.

"**AD/CVD**" means antidumping and/or countervailing duty.

"**Adjustment Cutoff Date**" means the beginning of the Test Period.

"**Affiliate**" of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity, excluding any Tax Equity Investor. For purposes of this definition, the term "control" (including the terms "controls," "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise.

"**After Tax Basis**" means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment ("**Base Payment**") supplemented by a further payment ("**Additional Payment**") to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

"**AGC**" stands for "**Automatic Generation Control**" and means energy management system equipment that automatically adjusts the quantity of Charging Energy and Discharge Energy of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

"**Ancillary Services**" means operating reserves, frequency regulation, reactive supply, voltage control, frequency response, contingency reserves, and other products associated with the storage and delivery of Energy, each to the extent that the Project is capable of providing such services.

"**Anything of Value**" includes, but is not limited to, cash or a cash equivalent (including

"grease," "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

"**Applicable Law**" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction applicable to this ESA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"**Back-Up Metering**" has the meaning set forth in Section 5.3(A).

"**Balancing Area Authority**" or "**BAA**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

"**Business Day**" means any calendar Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

"**Buyer**" has the meaning set forth in the Preamble and acts herein in its merchant function capacity.

"**Buyer Commissioning Delays**" has the meaning set forth in Exhibit O.

"**Buyer Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Buyer in connection with the termination of this ESA, to the extent such costs are not already included in Replacement ESS Costs.

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value; provided that if (b)(i) is less than (b)(ii), then zero, plus (c) any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes that are currently available pursuant to this ESA as of the date of termination of this ESA, Seller acknowledging that Buyer entered into this ESA for the procurement of Energy Storage Services, which includes any Future Environmental Attributes; plus (d) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. The Buyer Termination Payment shall not include consequential,

punitive, exemplary or indirect or business interruption damages.

"**CAISO**" means the California Independent System Operator Corporation and any successor entity.

"**CAISO Tariff**" means the CAISO Open Access Transmission Tariff that has been filed with an accepted by FERC, as may be amended from time to time.

"**Change in Tax Law**" means the occurrence, after the Execution Date, of any of the following: (a) the adoption or taking effect of any law, tax law, rule, regulation, order or treaty; (b) any repeal of or other change in any law, tax law, rule, regulation, order or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"**Change of Control**" means, with respect to Seller, any transaction or series of transactions following which Seller's Parent Entity no longer directly or indirectly (i) remains the owner of more than fifty percent (50%) of the direct or indirect equity or voting interests of Seller which are not otherwise held by Seller's Lenders or any Tax Equity Investors, or (ii) retains the power to control the management and policies of Seller; provided that Change of Control will exclude any Seller Permitted Transfer.

"**Charging Energy**" means the amount of Energy supplied by Buyer or the Solar Facility on behalf of Buyer, as applicable, at Buyer's cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured in MWh by the Electric Metering Devices, accounting for estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Code**" means the Internal Revenue Code of 1986, as amended, or any successor federal tax statute.

"**Commercial Operation**" means when the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the ESS Reliability Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-

Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this ESA; and (h) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

"**Commercial Operation Date**" means the date on which all of the following have occurred (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10; (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation Notice**" has the meaning set forth in Section 3.10.

"**Commercial Operation Year**" means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

"**Commissioning Performance Test**" means the Initial ESS Unit Capabilities testing detailed in Exhibit F required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

"**Commissioning Readiness Review Meeting**" has the meaning set forth in Exhibit O.

"**Commissioning Tests**" has the meaning set forth in Section 10.2 as further defined in Exhibit F.

"**Commissioning Kickoff Meeting**" has the meaning set forth in Section 3.1 of Exhibit O.

"**Confidential Information**" has the meaning set forth in Section 22.14(C).

"**Contract Value**" means the sum of the present values of the ESS Payments for each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination), which annual amount is equal to (a) the quantity of ESS Capacity expected to be made available during such Commercial Operation Year (or portion thereof) times (b) the ESS Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Counteracting Savings Notice**" has the meaning set forth in Section 3.17(D).

"**Creditworthy**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows:

(a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Data Breach**" has the meaning set forth in Section 22.14(F).

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

"**Default Rate**" has the meaning set forth in Section 9.4.

"**Defaulting Party**" means the Party with respect to which an Event of Default under Article 12 has occurred.

"**Delay Damages**" has the meaning set forth in Section 3.7.

"**Delayed ESS Capacity**" has the meaning set forth in Section 3.7.

"**Delivery Term**" has the meaning set forth in Section 7.1.

"**Delivery Term Security**" has the meaning set forth in Section 19.1.

"**Development Security**" has the meaning set forth in Section 19.1.

"**Discharge Energy**" means Energy discharged from the ESS and delivered to Buyer at the Point of Delivery, as measured in MWh by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties.

"**Disclosing Party**" has the meaning set forth in Section 22.14(A).

"**Dispute Notice**" has the meaning set forth in Section 13.8.

"**Disputing Party**" has the meaning set forth in Section 9.5(A).

"**DOC**" means the US Department of Commerce.

"**Dollars**" means the lawful currency of the United States of America.

"**DOT**" means a Dispatch Operating Target as such term is further defined in the CAISO Tariff.

"**Downgrade Event**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is not as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Early Termination Date**" has the meaning set forth in Section 12.4.

"**EDAM**" means the Extended Day-Ahead Market, an extension of CAISO's existing day-

ahead energy market, that will be offered to participants outside of the CAISO balancing authority area to participate in day-ahead trading, and which is expected to launch in Q2 2026.

"**EIM**" means the Western Energy Imbalance Market, an energy-only real-time market operated by CAISO and offered to western participants outside of the CAISO balancing authority area, where such participants can voluntarily determine how their transmission and generation resources engage in the market.

"**Electric Interconnection Point**" means the Point of Delivery.

"**Electric Metering Device(s)**" means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharge Energy. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering including the metering current transformers and the metering voltage transformers.

"**Eligible Change in Tariff**" means any change in Applicable Law, new interpretation of existing Applicable Law or action by a Governmental Authority occurring after April 2, 2025 that (a) imposes on Seller or Seller's Affiliates with respect to the importation of Imported Equipment into the United States any duty (including AD/CVD), tariff, import tax, or other similar import fee or cost that becomes effective after, or the enforcement of which commences after, April 2, 2025, or (b) increases the applicable rate of any of the foregoing which becomes effective after April 2, 2025, to the extent affecting Imported Equipment; provided, however, that the 25% tariff on lithium-ion batteries enacted pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), with an effective date of January 1, 2026, is not an Eligible Change in Tariff.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller's breach of its Interconnection Agreement with the Transmission Provider.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project, as measured by Electric Metering Devices, net of auxiliary loads, station electrical uses and appropriate line losses.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer's dispatch instructions and subject to the terms and conditions of this ESA.

"**Energy Storage System**" or "**ESS**" means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or

otherwise arise from the Project's charging, discharging, delivery or storage of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include (A) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States Environmental Protection Agency or other governmental agencies, (B) any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act, (C) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, (D) credits, benefits or allowances resulting from the compliance of the Project or Project Energy with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes include all RECs, any and all aspects of a REC, and the exclusive right to claim the additionality, or "but for cause", of such Projects' development and commercial operation, (E) all WREGIS Certificates as defined by the WREGIS Operating Rules and (F) those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project's delivery or storage of electricity. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; (iii) any Energy, reliability or other power attributes from the Project, (iv) matters designated by Buyer as sources of liability, and (v) any adverse wildlife or environmental impacts.

"**Environmental Contamination**" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

"**Equivalent Full Cycle**" means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity

over a four (4) hour duration. An Equivalent Full Cycle occurs when the total ESS Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

"**ESA**" means this Energy Storage Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"**ESS Capacity**" means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for four (4) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically by the ESS Capacity Test in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Capacity Shortfall Damages**" has the meaning set forth in Section 3.8.

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Non-Performance Liquidated Damages**" has the meaning set forth in Section 3.13.

"**ESS Operating Restrictions**" means the operating restrictions of the ESS set forth in Exhibit L.

"**ESS Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Payment Rate**" means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

"**ESS Response Shortfall**" has the meaning set forth in Exhibit F.

"**ESS Response Shortfall Damages**" has the meaning set forth in Section 3.13(B).

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the ESS Electric Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Unit Capabilities**" has the meaning set forth in Section 3.12.

"**Event of Default**" means a Seller Event of Default as set forth in Section 12.1 or a Buyer Event of Default as set forth in Section 12.2.

"**Excused Delay**" means any of the following: (a) Force Majeure, (b) Interconnection Delay, (c) an Import Restraint, as provided in Section 3.17, or (d) any delay in obtaining Lease Approval, to the extent in each case (i) not caused by an act or omission of Seller, (ii) occurring despite Seller's exercise of Prudent Utility Practices, (iii) not reasonably foreseeable, and (iv) beyond the reasonable control of, and not caused by the negligence or lack of due diligence of,

Seller or its contractors or suppliers.

"**Execution Date**" has the meaning set forth in the Preamble.

"**Expected Commercial Operation Date**" has the meaning set forth in Section 3.1.

"**Express Contingency Notice**" has the meaning set forth in Section 3.17.

"**Express Contingency Termination Payment**" means a termination amount equal to Five Million Dollars ($5,000,000).

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**Fitch**" means Fitch Ratings Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

"**Force Majeure Event**" has the meaning set forth in Section 14.1.

"**Frequency Response Capability**" means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on the Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date.

"**GAAP**" has the meaning set forth in Section 22.18.

"**Government Official**" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

"**Governmental Approval**" means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this ESA or the procurement pursuant to this ESA of Product or any component thereof, and shall also mean,

where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

"**Governmental Authority**" means any applicable federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"**Governmental Charges**" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product, either directly or indirectly.

"**Gross Receipts Taxes**" means any New Mexico state and local sales taxes, gross receipts taxes and similar taxes and charges.

"**Grid Charging Energy**" means Charging Energy supplied from the grid and delivered to the Point of Delivery by Buyer.

"**Guaranteed Charge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed Discharge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed ESS Capacity**" has the meaning set forth in Section 3.12, as may be adjusted pursuant to Section 3.8, and shall be valid for the full duration of the ESA with no allowance for degradation.

"**Guaranteed ESS Roundtrip Efficiency**" has the meaning set forth in Section 3.12.

"**Guaranteed PMAX**" has the meaning set forth in Section 3.12.

"**Guaranteed Start Date**" has the meaning set forth in Section 3.1.

"**Guaranteed System Latency**" means the guaranteed time measured between when the control signal is received and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as specified in Section 3.12.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean

Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" means energy consumed by ESS ancillaries not directly involved in the control, receipt, storage, or discharge of energy during charging or discharging.

"**Imported Equipment**" means batteries, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project and intended to be imported into the United States from foreign destinations for the Project.

"**Import Restraint**" means any withhold release order or other law, rule, or regulation, including the Uyghur Forced Labor Prevention Act, or any action of a Governmental Authority under any such order, law, rule, or regulation, that imposes additional waiting time for Seller to receive Imported Equipment from foreign destinations, or prevents or delays the import or release of any Imported Equipment into the United States.

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended, amended and restated, modified, replaced or otherwise supplemented from time to time.

**"Interconnection Delay"** means the Transmission Provider's delay of the In-Service Date (as may be extended from time-to-time pursuant to and as defined in the Interconnection Agreement, or an analogous date, to the extent the Interconnection Agreement is amended or replaced) beyond the schedule set forth in the Interconnection Agreement (including delay in setting the In-Service Date, other than due to the failure of the Interconnection Agreement to come out of suspension) in completing construction of the Interconnection Facilities or upgrades to the Transmission Provider's Transmission System related to, and required pursuant to the Interconnection Agreement for the interconnection of the Project, but only to the extent that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, including Seller's failure to complete its obligations under the Interconnection Agreement as needed to ensure timely completion and operation of such Interconnection Facilities.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities as defined and set forth in the Interconnection Agreement (or an analogous term, to the extent the Interconnection Agreement is amended or replaced).

"**Issuer Minimum Requirements**" has the meaning set forth in Section 19.2.

"**ITC(s)**" means the investment tax credits established pursuant to Section 48 or Section 48E of the Code, as such law may be amended or superseded.

"**kW**" means one or more kilowatts AC of electricity, as the context requires.

"**kWh**" means kilowatt hour AC.

"**Lease Approval**" means, with respect to that certain Solar Energy Facility Business Lease Agreement, dated effective as of February 27, 2024, by and between Ute Mountain Ute Tribe and Foxtail Flats Solar, LLC, as amended pursuant to that certain First Amendment to Solar Energy Facility Business Lease Agreement for Foxtail Flats Solar, (i) review pursuant to the National Environmental Policy Act resulting in a Finding of No Significant Impact, and (ii) final, unappealable approval by the Bureau of Indian Affairs.

"**Lender(s)**" means any and all Persons, including Affiliates of Seller (a) lending money or extending credit (including any financing lease, monetization of tax benefits, construction, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or its Affiliates: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing (including tax equity bridge financing), credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) for any capital improvement or replacement related to the Project; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

"**Letter of Credit**" means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

"**Licensed Professional Engineer**" means an independent, professional engineer that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, (4) Clean Energy Associates, or (5) Leidos Engineering, LLC; and (B) reasonably acceptable to Buyer (provided that at least one of the foregoing (A)(1)-(5) shall be reasonably acceptable to Buyer), licensed in the State of New Mexico and otherwise qualified to perform the work and provide the certifications required hereunder.

"**Local Provider**" has the meaning set forth in Section 1.4.

"**Losses**" has the meaning set forth in Section 20.1(A).

"**Market Event**" has the meaning set forth in Section 22.22.

"**Market Operator**" means (a) CAISO in its capacity as operator of EIM, (b) the operator of the BAA or any other entity performing the market operator function for the BAA, or (c) any organized day-ahead or intra-hour market for a region that includes the Transmission Provider's Transmission System.

"**Maximum State of Charge**" means the relative SOC above which the battery manufacturer recommends that the BESS system not be charged, expressed in percent of Nameplate Energy Capacity.

"**Minimum State of Charge**" means the relative SOC below which the battery manufacturer recommends that the BESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

"**Month**" means a calendar month.

"**Monthly Billing Period**" means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.8.

"**Moody's**" means Moody's Investor Services, Inc. and any successor thereto.

"**Mountain Standard Time**" or "**MST**" means the time that is seven (7) hours behind Coordinated Universal Time (UTC).

**"MPT Failure"** means any failure in the Project's main power transformer or high voltage breakers (a) requiring (x) at least a thirty (30) day outage and (y) any of (i) replacement of the main power transformer or high voltage breakers, (ii) shipment of the main power transformer or major component thereof, or high voltage breakers or major component thereof, to the manufacturer for repair, or (iii) the on-site repair of the main power transformer or major component thereof, or high voltage breakers or major component thereof, and (b) that is not caused directly or indirectly by Seller's failure to comply with Prudent Utility Practices (including failure to maintain adequate spare parts for replaceable equipment connected to the main power transformer or high voltage breakers) or Applicable Law or otherwise by the dalliance, delay, fault or negligence of or by Seller.

"**Munitions List**" means any list of articles, services or technology designated as defense or military articles, technologies, software or services by any relevant Government Authority, including items listed on the United States Munitions List and/or the Common Military List of the European Union.

"**MW**" means megawatt or one thousand (1,000) kW AC.

"**MWh**" means megawatt hours AC.

**"Nameplate Energy Capacity"** is the maximum amount of energy in MWh, less auxiliary loads, that the BESS can store at 100% state of charge.

"**NERC**" means the North American Electric Reliability Corporation or any successor organization.

"**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in Section 17.3(B).

"**Non-Defaulting Party**" means the Party other than the Defaulting Party with respect to

an Event of Default that has occurred under Article 12.

"**Non-Governmental Compliance Obligations**" means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, and self-regulatory organizations to which the Party is required to have membership and/or submit to jurisdiction in the performance of this ESA.

"**O&M Records**" has the meaning set forth in Section 13.4(A).

"**OATT**" means the Open Access Transmission Tariff.

"**Operating Parameters**" has the meaning set forth in Section 10.4(A).

"**Operating Procedures**" means those procedures developed pursuant to Section 10.5.

"**Operating Records**" means all operating logs, blueprints for construction, operating manuals, all warranties on equipment, material engineering drawings, environmental permits, plans, and all documents, including but not limited to supply contracts, studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project. Seller may redact from Operating Records information that Seller reasonably deems commercially sensitive, so long as such redaction does not result in a non-performance by Seller of any of its obligations under this ESA, including audits under Section 22.18 or required to verify Seller's compliance with this ESA and its representations and warranties in Section 15.1, Guaranteed ESS Capacity, and billing and payments.

"**Outage Notice**" has the meaning set forth in Section 7.5(A).

"**Party**" or "**Parties**" has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

"**Person**" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**Point of Contact List**" or "**POC List**" has the meaning set forth in Section 2 of Exhibit O.

"**Point of Delivery**" means the electric system point at which (a) Buyer delivers Charging Energy to Seller if Buyer elects to deliver Grid Charging Energy, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA. Energy delivered from the Project to the Energy Storage System shall be adjusted for losses as of Delivery and shall be deemed to have been delivered at the Point of Delivery.

"**PPA**" or "**Power Purchase Agreement**" means that certain Power Purchase Agreement,

dated as of May 29, 2025, by and between Four Mile Mesa Solar, LLC and Buyer relating to the Solar Facility, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

"**Primary Metering Device(s)**" means the metering and data processing equipment used as the primary basis to measure, record, or transmit data relating to the Charging Energy or Discharge Energy associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

"**Product**" means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, from the Project, all of which shall be made available and delivered for Buyer's exclusive use pursuant to the terms of this ESA.

"**Project**" means Seller's energy storage facility, located on the Site, with a designed maximum power discharge capability of 100 MW for four (4) hours (400 MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller's equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

"**Project Manager**" has the meaning set forth in Section 10.1(D).

"**Project Schedule**" has the meaning set forth in Section 3.2.

"**Promotional Materials**" has the meaning set forth in Section 22.15.

"**Prudent Utility Practice(s)**" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available when needed and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in

coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for ESS of the technology provided in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

"**PTs**" has the meaning set forth in Section 5.3(A).

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that either (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) a current long-term credit rating (corporate or long-term senior unsecured debt) of (A) "A2" or higher by Moody's and "A" or higher by S&P, if such Person is rated by both Moody's and S&P or (B) "A2" or higher by Moody's, or "A" or higher by S&P if such Person is rated by either S&P or Moody's, or (C) equivalent ratings by any other credit rating agency of recognized national standing and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project), or (b) is reasonably acceptable to Buyer.

"**Rating Agency**" shall mean S&P, Moody's or Fitch.

"**Receiving Party**" has the meaning set forth in Section 22.14(A).

"**Receiving Party's Representatives**" has the meaning set forth in Section 22.14(B).

"**Recording**" has the meaning set forth in Section 22.19.

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator, as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Renewable Energy Certificate**" or "**REC**" means a WREGIS Certificate as defined by the WREGIS Operating Rules and all Environmental Attributes associated with the generated energy. If and when applicable, any RECs delivered by Seller must be compliant with the requirements of the New Mexico Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended.

"**Replacement ESS Costs**" means the actual costs incurred by Buyer following an Event of Default that are reasonable and necessary to replace the Product (based upon similar terms, conditions and performance standards outline in this ESA) which Seller, in accordance with this ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable Product delivered to Buyer's system, as reasonably determined by a third party reasonably acceptable to both Parties. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this ESA.

"**Report Review Period**" means a period of time equal to fifteen Business Days, beginning on receipt of the report of the Technical Expert pursuant to Section 3.17.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**Retail Customer**" has the meaning set forth in the Recitals.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community or, His Majesty's Treasury or any, and each other sanctions

authority which has jurisdiction in respect of any Party or the Project.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"**Scheduled Maintenance Outage**" means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this ESA, or as otherwise agreed by Seller and Buyer.

**"Scope Reporting Rule"** means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 Code of Federal Regulations § 229.1500, et seq., as amended from time to time, and, to the extent Buyer or Retail Customer voluntarily elects in its sole discretion to comply therewith, as proposed, or, following the effectiveness thereof, in the final rule form thereof despite being stayed or vacated by appealable judicial action and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Subscriber voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

"**SEC**" has the meaning set forth in Section 22.18.

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Section 48 Rate Adjustment**" means a change in Applicable Law that (i) reduces the ITC for energy storage, or (ii) affects the value, availability or transferability of the ITC for energy storage, including, but not limited to, any repeal, amendment or modification of the Inflation Reduction Act of 2022, in each case, from the amount Seller could have realized or incurred under Applicable Law in effect as of the Execution Date.

"**Security**" means Development Security or Delivery Term Security, as applicable.

"**Seller**" has the meaning set forth in the Preamble.

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product to Buyer as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, (c) dispatch of the Project by Buyer that is not in accordance with the Operating Parameters (other than due to a breach by Seller of its obligations under this ESA), (d) failure of Buyer to have provided sufficient Charging Energy for such discharge, or (e) any failure by Buyer to deliver Charging Energy or receive Discharge Energy at the Point of Delivery.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery, in an amount of at least five (5) MWs and not associated with Seller Excused Hours.

"**Seller Guarantor**" means an entity that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Parties**" means: (a) Seller's Affiliates; (b) owners, directors, officers and employees of Seller or Seller Affiliates; and (c) representatives, agents, and subcontractors of Seller and/or Seller Affiliates, in each case, providing services on behalf of, or engaged by, Seller or Seller Affiliates in connection with this ESA and any activity contemplated hereunder or thereunder (and a "Seller Party" is any one of the foregoing).

"**Seller Permitted Transfer**" means any of the following: (a) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Ultimate Parent retains the ability to control the management and policies of Seller; (b) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction or (iii) a direct or indirect transfer to an entity of 50% or more of the shares of, or equity interests in, Seller so long as Seller remains Controlled by Seller's Ultimate Parent; *provided*, that in the case of (b), (A) the transferee is a Qualified Transferee, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to any Seller's Lender and any subsequent assignee, designee or transferee thereof; *provided* that in the case of (c), (A) the Seller's Lender or its applicable assignee, designee or transferee is a Qualified Transferee and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Product) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; provided that if (a)(i) is less than (a)(ii), then zero, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or in entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this ESA.

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with

any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this ESA.

**"Senior Lender"** means a Lender that is not an Affiliate of Seller.

"**Serial Defect**" means a defect occurring in ten percent (10%) or more of the same parts or components of the Project.

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. This ESA is Site specific and any relocation of the physical location of the proposed Point of Delivery with respect to the Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. Adding or subtracting contiguous parcels of property or modifying the layout of the batteries within the Site will not be deemed a relocation requiring Buyer consent.

"**Solar Charging Energy**" means Charging Energy generated by the Solar Facility and delivered to the Solar Charging Point by the Solar Facility on behalf of Buyer.

**"Solar Charging Point"** means the electric system points specified on Exhibit B at which Seller delivers Solar Energy Output (as defined in the PPA) to the Energy Storage System for purposes of charging the ESS under the terms of this ESA.

"**Solar Facility**" means the co-located 100 $MW_{AC}$ Four Mile Mesa solar generating plant consisting of photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary to collect sunlight and convert it into electricity which, among other things, will be used to charge the ESS per Buyer's dispatch elections.

"**Special Service Contract**" has the meaning set forth in the Recitals.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch generating units, including the ESS.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits, and any other tax credits which are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, (i) with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to

and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project or (ii) any transaction or series of transactions pursuant to which Seller or an upstream equity owner of Seller sells the tax credits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

"**Technical Expert**" means, (i) with respect to an Import Restraint, an independent third-party validation firm that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, or (4) Clean Energy Associates; or (B) mutually agreed upon by both Parties; (ii) with respect to a Counteracting Savings Notice or Express Contingency Notice, an independent third-party validation firm that is: (A) selected by Buyer if a Counteracting Savings Notice, or Seller if a Express Contingency Notice from among (1) Pricewaterhouse Coopers, (2) KPMG, or (3) Ernst & Young; or (B) mutually agreed upon by both Parties.

"**Term**" means the period during which this ESA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Energy**" means any and all Discharge Energy discharged by the Project and delivered to Buyer during the Test Period.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

"**Transmission Provider**" means Public Service Company of New Mexico, Inc., a New Mexico corporation, acting in its transmission function capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means DESRI Holdings, L.P. or its successor in interest with respect to Seller following a Seller Permitted Transfer upon notice to Buyer identifying the new Ultimate

Parent.

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org**.**

"**WREGIS Qualified Reporting Entity**" as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS Certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules and WREGIS Terms of Use.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this ESA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this ESA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this ESA, the terms of this ESA shall take precedence.

(D) This ESA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this ESA, and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this ESA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this ESA. Unless expressly provided otherwise in this ESA, (i) where the ESA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the ESA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this ESA as a whole.

(H) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(I) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or".

(J) Headings and Section titles are solely for convenience and should not be used to aid in the construction of this ESA.

(K) All uses of the word "shall" in this ESA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party shall conduct its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions and therefore:

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this ESA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this ESA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

(D) Notwithstanding the foregoing, nothing in this ESA shall be construed to limit Seller's rights, claims, causes of action or similar legal abilities against the Transmission Provider, BAA or Market Operator for actions those parties may take from time to time, nor shall this ESA be construed to limit the liability of the Transmission Provider, BAA or Market Operator with respect to Seller.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of House Energy or station service power from the auxiliary step-down

transformer. Seller shall secure a contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy and station service power from the auxiliary step-down transformer must be separate or bi-directional or able to be financially separated from the metering (*e.g.,* SCADA-generated loss assumptions) of Charging and Discharging of the ESS in a manner that complies with WREGIS Operating Rules, as applicable, and is otherwise compliant with industry standards.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least thirty (30) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this ESA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Solar Facility for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such additional facilities shall not be delivered by Seller to Buyer under this ESA. House Energy and station service power shall be real time measured by a dedicated Electric Metering Device to the extent commercially reasonable, or separately based on metering logic or SCADA points, and shall not be delivered by Seller to Buyer under this ESA, and station service power shall be measured from its auxiliary stepdown transformer.

## ARTICLE 2
## Term and Termination

2.1 Execution Date and Term. This ESA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth ($20^{th}$) Commercial Operation Year ("**Term**"), subject to the early termination provisions set forth herein. Applicable provisions of this ESA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

## ARTICLE 3
## Project Description

3.1 Commercial Terms. The following commercial terms, and as more fully set forth in this ESA, apply to the transaction contemplated by this ESA:

**COMMERCIAL TERMS**

| | |
|---|---|
| **Buyer:** Public Service Company of New Mexico | **Seller:** Four Mile Mesa Storage, LLC |
| **Project:** Four Mile Mesa Storage | |
| **Point of Delivery:** The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of "Point of Delivery." | |
| **Contract Term:** Twenty (20) years following the Commercial Operation Date | **Product Type:** Bundled Discharge Energy, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services |
| **ESS Payment Rate:** $21.25 per MWh | |
| | |
| **Day(s) of week:** Monday through Sunday, including NERC holidays | **Hours:** Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time ("**MST**") |
| **Guaranteed Start Date:** Two Hundred and Seventy (270) Days after the Expected Commercial Operation Date | |
| **Expected Commercial Operation Date:** December 31, 2027, subject to extensions as set forth in Section 3.6. | |

3.2 Project. Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this ESA. Exhibit A also contains a preliminary indication of the location of the ESS and Solar Facility at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS, Interconnection Facilities, and Solar Facility at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes; provided, however, that such consent from Buyer or the Retail Customer shall not be unreasonably conditioned, withheld or delayed.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the Interconnection Agreement, and the terms of this ESA. The Project shall meet or exceed the recommended performance specifications of this Sections 3.4.A through 3.4.H, and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N – Example Interconnection Metering Diagram from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Discharge Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) be capable of receiving Grid Charging Energy and Solar Charging Energy delivered from the Solar Facility and delivering Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of operation over an ambient temperature range of -10$^{o}$F to 110$^{o}$F with the full range of relative humidity;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of disconnection remotely by the System Control Center;

(I) meet or exceed the recommended performance specifications of Sections 3.4.I through 3.4.L, and as appropriately defined in IEEE Standard 2800-2022 Sections 5, Section 6 and Section 7 at the Point of Delivery, Seller and Buyer acknowledge that in some instances simultaneous conflicting parameters cannot be followed at all times;

(J) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Section 5 at the Point of Delivery;

(K) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Sections 7 at the Point of Delivery, which shall be Category II minimum;

(L) meet or exceed the recommended performance specifications defined

in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery; and

(M) no later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Sections 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. As reasonably required prior to Commercial Operation, Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this ESA, the Commercial Operation Date shall occur no later than the Guaranteed Start Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date related damages provisions under Section 3.7 shall be extended(a) up to a maximum of one hundred eighty (180) Days or longer period agreed to by the Parties, equal to the duration of any Excused Delay that delays construction or commencement of operation of the Project, on a day-for-day basis (b) up to a maximum of one hundred eighty (180) days, or longer period agreed to by the Parties in the event of delay associated with the timely completion and operation of the Interconnection Facilities necessary for the interconnection of the Project (and in any event allowing for back-feed to the Project by no later than March 15, 2027), provided that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, on a day-for-day basis, (c) on a day-for-day basis up to a maximum of one hundred eighty (180) Days for each Day that NMPRC Approval has not been received after the occurrence of the Regulatory End Date, and (d) on a day-for-day basis for any Buyer Commissioning Delays. Seller shall give written notice to Buyer describing any such delay in accordance with Section 14.2 after becoming aware of any extension of Expected

Commercial Operation Date. The number of Days of such extension shall be calculated from the date on which the event begins. If cumulative extensions under (a) or (b) above will delay the Commercial Operation Date beyond the Guaranteed Start Date for more than two hundred seventy (270) Days, then Buyer will have the right to terminate this ESA without liability of either Party other than obligations already incurred, and Buyer shall return the Development Security less any amounts then due from Seller to Buyer.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed ESS Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed ESS Capacity**" means the Guaranteed ESS Capacity minus the ESS Capacity as of the determination date. Once the accrued Delay Damages equal the Development Security, then Seller shall thereafter not be obligated to pay Delay Damages. The Delay Damages and Buyer Termination Payment are the Buyer's sole and exclusive monetary remedies, and Seller's sole and exclusive monetary liabilities, for Buyer's damages due to any delays in achieving the Expected Commercial Operation Date.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars ($350,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**") as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed ESS Capacity, in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8, and further the Delivery Term Security will be adjusted on a pro rata basis corresponding to the reduction in the Guaranteed ESS Capacity.

3.9 Test Period. Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generation Operator and will designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M, forty-five (45) Days prior to the beginning of the Test Period. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. During the Test Period, Seller agrees to accept and purchase all Test Energy (net of losses due to ESS Roundtrip Efficiency) generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty (50%) percent of the ESS Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to

commencement of such Test Period. Scheduling for subsequent deliveries of Discharge Energy shall be as set forth in section 5.1.

3.10 Notice of Commercial Operation. Not less than thirty (30) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such anticipated Commercial Operation Date; provided that such anticipated Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied (the "Commercial Operation Notice"). Buyer shall in writing either accept or reject Seller's Commercial Operation Notice within ten (10) Business Days after the date of such Commercial Operation Notice, in its reasonable discretion, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If, within such ten (10) Business Day period, Buyer does not respond or if Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Charging. Seller shall construct the ESS to accept Charging Energy as both Grid Charging Energy and Solar Charging Energy and make commercially reasonable efforts to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from both the electrical grid and Solar Facility by the Commercial Operation Date. Buyer agrees that it shall, at Seller's reasonable request, deliver Grid Charging Energy to the ESS to enable Seller to perform the commissioning tests for the ESS pursuant to Section 10.2 and as otherwise may be necessary for Seller to achieve Commercial Operation.

3.12 ESS Unit Capabilities. "ESS Unit Capabilities" means all of the following for the ESS, all as measured and determined at the Point of Delivery:

(A) **Guaranteed PMAX**" shall be 100 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) **Guaranteed ESS Capacity**: discharge ESS at Guaranteed PMAX for four (4) consecutive hours; starting at the Maximum State of Charge and ending at the Minimum State of Charge;

(C) **Guaranteed ESS Roundtrip Efficiency** as shown in Exhibit K; Seller shall provide any applicable degradation forecasts applicable to this guarantee;

(D) **Guaranteed Discharge Ramp Rate** of Guaranteed PMAX per second measured between 100% state of charge and 0% state of charge representing the

maximum rate that the ESS can change its output power;

(E) **Guaranteed Charge Ramp Rate** of Guaranteed PMAX per second measured between 0% state of charge to 100% state of charge representing the maximum rate that the ESS can change its input power;

(F) **Guaranteed System Latency:** four (4) seconds;

(G) **Guaranteed Frequency Response Capability** of Guaranteed PMAX/0.1Hz; and

(H) **Capability to support Ancillary Services** in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Seller will pay Buyer the following liquidated damages ("**ESS Non-Performance Liquidated Damages**") as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, or (b) failure of Buyer to deliver Charging Energy) or to comply with the requirements of Section 7.4(a).

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Forty Thousand Dollars ($140,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured; and

(B) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, Guaranteed Frequency Response Capability, or Guaranteed System Latency during ESS Unit Capabilities Testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. Provided, however, under no circumstances will ESS Non-Performance Liquidated Damages (other than ESS Response Shortfall Damages) exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year and an aggregate of Two Million Dollars ($2,000,000) over the Term of this ESA.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay ESS Availability Damages, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

3.15 Guaranteed ESS Roundtrip Efficiency Payment. If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to $100/MWh * Guaranteed PMAX * 4 hours * (1 – (ESS Roundtrip Efficiency/Guaranteed ESS Roundtrip Efficiency)).

3.16 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this ESA is not prohibited by Applicable Law. Any breach of this Section 3.16 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.16 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.17 Eligible Change in Tariff; Import Restraint; Change in Tax Law.

(A) Seller acknowledges that this Section 3.17 is intended for sole use in connection with Retail Customer service under Schedule 36-B and is not precedential for any other contract or agreement with PNM, with Seller or with any other Person. To the extent either (X) one or more Eligible Change in Tariffs or Section 48 Rate Adjustments occurs between the Execution Date and the Adjustment Cutoff Date that Seller is able to document will increase Seller's costs reasonably anticipated over the Term to perform this ESA by an amount that is equal to at least one and one half percent (1.5%) of the costs Seller anticipated on the Execution Date, or (Y) one or more Import Restraints occurs between the Execution Date and the Adjustment Cutoff Date that will delay the Expected Commercial Operation Date, Seller may, prior to thirty (30) Days after the occurrence of each such Eligible Change in Tariff or Section 48 Rate Adjustment or Import Restraint, provide written notice to Buyer of an increase to the ESS Payment Rate to keep Seller whole (using Applicable Law and actions of Governmental Authorities in effect as of the Execution Date as the baseline) with respect to the cost increases in the case of an Eligible Change in Tariff or Section 48 Rate Adjustment, or delays that that Seller reasonably anticipates in the case of an Import Restraint, including replacement supply arrangements and the required extension of the Expected Commercial Operation Date, Guaranteed Start Date, and all other milestones (in each case, an "**Express Contingency Notice**").

(B) If Buyer disagrees with any aspect of an Express Contingency Notice, Seller shall at its expense retain the Technical Expert. Within fifteen (15) Business Days of Buyer's receipt of the Express Contingency Notice, Buyer and Retail Customer may submit a report to the Technical Expert setting forth questions, countervailing considerations, and other relevant matter, and thereafter the Technical Expert will generate a report respecting the matters set forth in the Express Contingency Notice, including whether it agrees with the cost increases in the case of an Eligible Change in Tariff or a Section 48 Rate Adjustment or schedule changes in the case of an Import Restraint, evidencing the facts alleged by Seller. Such report shall preserve the confidentiality of the information provided by the Parties. Buyer shall have the Report Review Period to review the report from the Technical Expert. Seller shall bear the expenses of the Technical Expert. The Technical Expert's final written determinations shall be binding on the Parties and not subject to dispute.

(C) The ESA shall be automatically amended on the first day following the Report Review Period to incorporate any increase to the ESS Payment Rate or extension to the Expected Commercial Operation Date, Guaranteed Start Date, or other

milestones as set forth in the Express Contingency Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable, except that unless Buyer agrees otherwise in writing: (1) any increase to the ESS Payment Rate pursuant to Section 3.17(A)(X) shall not exceed $1.45/MWh, and (2) any extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other milestone pursuant to Section 3.17(A)(Y) shall not exceed one hundred and eighty (180) days; and provided further, that if Seller's Express Contingency Notice sets forth for implementation an increase to the ESS Payment Rate that exceeds the increase limitation in clause (1) or extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other milestone that exceeds the extension limitations in clauses (2) above, and Buyer does not accept such excess increase or extension in writing, Seller shall have the right to terminate this ESA and pay to Buyer the Express Contingency Termination Payment, but without further liability of either Buyer or Seller for such termination, upon notice to Buyer, unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security less any unpaid Express Contingency Termination Payment to Seller within fifteen (15) days after such termination

(D) Counteracting Savings Price Adjustment. If a Change in Law occurs after the Execution Date and before the first anniversary of the last adjustment to price or schedule following an Express Contingency Notice that creates savings for Seller, economic benefits for Seller, decreases costs of performance or offsets prior increases in costs to performance set forth in a previous Express Contingency Notice, Buyer may, within ninety (90) days after such Change in Law, provide written notice to Seller of a decrease to the ESS Payment Rate (a "**Counteracting Savings Notice**"). The Parties shall use the process provided in Section 3.17(B) as if the Counteracting Savings Notice was an Express Contingency Notice, but providing for a reduction in the ESS Payment Rate and for Buyer to at its expense retain the Technical Expert, and Seller will have the Report Review Period to review the report of the Technical Expert. The ESA shall be automatically amended on the first day following the Report Review Period to incorporate any decrease to the ESS Payment Rate as set forth in the Counteracting Savings Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable; provided that, unless Seller agrees otherwise in writing, any decrease to the ESS Payment Rate under this Section 3.17(D) shall not exceed the cumulative previous increases to the ESS Payment Rate pursuant to all prior Seller Express Contingency Notices.

## ARTICLE 4
## AGC

4.1 AGC.

(A) Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning . Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the

Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability. Total cycles shall not exceed 365 Equivalent Full Cycles in any calendar year or two Equivalent Full Cycles in any 24-hour period.

## ARTICLE 5
## Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this ESA. Seller shall construct or secure use of facilities necessary (i) to deliver the Discharge Energy to the Point of Delivery, (ii) to receive Solar Charging Energy from the Solar Facility at the Solar Charging Point, and (iii) in the event Buyer elects to utilize Grid Charging Energy pursuant to Section 3.11, to receive Grid Charging Energy at the Point of Delivery to the ESS. Delivery of Energy from the Solar Facility to the Transmission Provider's Transmission System shall take priority over Discharge Energy; provided, however, when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Discharge Energy shall take priority over delivery of Energy from the Solar Facility.

(B) Seller shall be responsible for the costs required to receive and deliver Energy at the Point of Delivery for the Project at the required voltage, limited to the costs of any associated network upgrades and "Transmission Provider Interconnection Facilities" (as defined in the Interconnection Agreement). As between Buyer and Seller under this ESA, Seller shall also be responsible for all electrical losses applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery. Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses, imbalances, and any other transfer-related charges required to deliver Discharge Energy from and beyond the Point of Delivery. In the event Buyer elects to utilize Grid Charging Energy pursuant to Section 3.11, Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses, scheduling, imbalance energy and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(C) If applicable and required by Buyer, Seller shall retain Public Service Company of New Mexico as its WREGIS Qualified Reporting Entity to report to WREGIS under the WREGIS Operating Rules.

(D) Buyer shall secure all necessary transmission service arrangements,

including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, including as necessary under participation in any regional market, including the EIM or the EDAM, if any, and (ii) to deliver Charging Energy to the Point of Delivery, including during the Test Period. Buyer shall cooperate with Seller in good faith to accommodate commercially reasonable arrangements that provide for House Energy.

(E) Seller shall provide to Buyer a one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers ("**CTs**") and potential transformers ("**PTs**") ("**Back-Up Metering**"), each in an arrangement consistent with the applicable configuration depicted in Exhibit N, or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement conflicts with these provisions, in which case the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this ESA. The design of the Electric Metering Device system shall be subject to Buyer timely review and approval, not to be unreasonably withheld. Buyer will, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe following such test. ESS Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous, five minute, fifteen minute, and hourly real and reactive Energy and capacity, if supplied by either the grid, the Solar Facility, or the Project. ESS Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall

be metered using solid state, high precision, digital display meters of ANSI 0.2 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party shall, at its own expense, inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Secondary Metering, fails to register, or if the measurement made by an Electric Metering Device, or Secondary Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, followed by Secondary Metering to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

## ARTICLE 6
## Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this ESA are subject to satisfaction of the following conditions precedent:

(A) As provided in Section 17.3, receipt of NMPRC Approval; and

(B) Receipt of approval of the Boards of Directors of Buyer and its parent company.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

## ARTICLE 7
## Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell, make available and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available and delivered by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Party's performance is excused by a Force Majeure Event; (b) a Seller Forced Outage is continuing; (c) a Seller Scheduled Maintenance Outage is continuing; or (d) Seller's performance is excused during Seller Excused Hours.

7.2 Title and Risk of Loss. Four Mile Mesa Solar, LLC shall be deemed to be in control of all Solar Charging Energy up to the Solar Charging Point or Point of Delivery (as applicable),

Buyer shall be deemed to be in control of all Grid Charging Energy up to delivery, but not including, receipt, at the Point of Delivery. Seller shall be in control of such Charging Energy from and after such delivery by Four Mile Mesa Solar, LLC to the Solar Charging Point or by Buyer to the Point of Delivery, as applicable, until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy up to the Point of Delivery. Buyer shall be in control of such Discharge Energy from and after Seller's delivery and upon Buyer's receipt at the Point of Delivery. Notwithstanding anything set forth herein to the contrary, Buyer shall retain title and risk of loss for all Charging Energy stored in the ESS, Energy stored in the ESS, and Discharge Energy at all times. Title related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such Future Environmental Attributes is included in the ESS Payment Rate; and (c) such Future Environmental Attributes pass to Buyer. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines. PNM is not required to provide this Project as a participating resource in a regional market, including the EIM or EDAM. However, should Buyer submit the Project for participation in any regional market, including the EIM or EDAM, the Parties agree that Buyer shall be solely responsible for any costs associated with the Project's participation in any regional market, including but not limited to costs associated with upgrades to the Project's RTU hardware, software, communication connection upgrades or any other upgrades necessary for the Project to participate in the regional market. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Discharge Energy and Charging Energy in accordance with NERC/WECC operating polices and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) [RESERVED]

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly ESS availability for the next six (6) Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Seller Forced Outages.

(A) Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Seller shall keep Buyer informed of any material developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

## ARTICLE 8
## Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Payment. Subject to Section 14.4 and Section 2.1(C) of Exhibit H, Buyer shall pay Seller an amount equal to the product of (i) ESS Capacity, not to exceed the Guaranteed ESS Capacity, *multiplied by* (ii) the ESS Payment Rate, *multiplied by* (iii) the ESS Available Hours (the "**ESS Payment**"). The ESS Payment also compensates Seller for the associated Future Environmental Attributes and Ancillary Services delivered to Buyer. The ESS Payment includes all Taxes except as provided for in Section 9.7, Section 20.1(B) and Section 21.1.

Example: For a 30-day month, assuming 98% availability:

*ESS Payment = 100 MW x 30 days x 24 hours x $21.25/MWh x .98*

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this ESA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 9
## Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period. Each such invoice shall show the ESS Payment, information and calculations, in reasonable detail.

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to Clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this ESA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this ESA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this ESA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the "prime" rate as published in The Wall Street Journal on the first Business Day of each Month plus one-half percent (0.5%) ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) All Discharge Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Discharge Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this ESA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Gross Receipts Tax is applicable to the sale or delivery of Product hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Product delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Product and on Buyer's payment and Seller's receipt of amounts due under this ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this ESA.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this ESA and implement the provisions in this ESA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, copies of any documentation respecting this ESA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this

ESA, including Section 9.9 below, all payments between the Parties under this ESA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this ESA, including damages and other payments that are owed by a Party to the other Party pursuant to this ESA. Undisputed and non-offset portions of amounts invoiced under this ESA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this ESA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this ESA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 10
## Operations and Maintenance

10.1 Construction of the Project.

(A) Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a 1 Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-23-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15$^{th}$ of each month. For cases where the 15$^{th}$ falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as

Seller's compliance with the apprenticeship standards established by NMSA Section 62-13-16. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer after consultation with Retail Customer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date), a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this ESA and any documents ancillary hereto, neither this ESA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith, including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this ESA with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein, provided that with respect to Buyer coordination requirements Buyer timely responds to all requests from Seller relating thereto when acting in its merchant function capacity (all communications regarding Commissioning Tests between Seller and the Transmission Provider are governed by the Interconnection Agreement and not this PPA) associated with the Commissioning Tests.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Such Commissioning Test procedures shall meet or exceed the operability performance requirements defined in IEEE Standard 2800-2022 Sections 4. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least thirty (30) Days' prior notice of the approximate test date and three (3) Days' prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days' advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this ESA, shall relieve Seller of or reduce its

obligation to maintain the Project and operate the same in accordance with this ESA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA; and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five minute and real time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Discharge Energy delivered by Seller will meet operability performance requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all reasonably required real time measurement parameters of the Project made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Sections 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers requirements and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's substation major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day's written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than ninety (90) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "Operating Procedures"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must operate, maintain and control the Project at all times consistent with the Operating Procedures, the ESA, Prudent Utility Practices, Applicable Laws, the Shared Facilities Agreement, Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

(A) Seller will prepare detailed test protocols and procedures for all of the Commissioning Tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be unreasonably denied or delayed.

(B) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and provide the results to Buyer. Seller will have sixty (60) Days from the test date to cure any deficiencies in the performance of the test.

(C) In the event of a material adverse change in ESS Unit Capabilities, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the following conditions. Buyer-Requested Performance Tests will be conducted in a manner consistent with the annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F.

(1) If the results of a Buyer-Requested Performance Test fail to meet the Guaranteed ESS Unit Capabilities, ESS Non-Performance Liquidated Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(2) Only two (2) Buyer-Requested Performance Tests may be requested

per Commercial Operation Year.

(3) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

(D) In addition to the foregoing, Seller may, at its option and expense, perform additional tests ("**Seller-Requested Performance Tests**") in accordance with test protocols and procedures set forth in Exhibit F.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following Commercial Operation Year. Should Buyer desire to change the reporting dates noted above, the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each Scheduled Maintenance Outage for the Commercial Operation Year will be subject to reasonable approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month

after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

## ARTICLE 11
## Future Environmental Attributes

11.1 Sale of Environmental Attributes. Effective from the date on which Seller first makes Product available, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer within than fifteen (15) Business Days after the Future Environmental Attributes are available to be transferred in the respective attribute tracking system. Buyer may request that Seller provide Buyer with a reasonable estimate of the incremental costs, if any, that Seller would incur to deliver to Buyer Future Environmental Attributes pursuant to WREGIS or another tracking system or registry, as requested by Buyer. Seller shall provide such reasonable cost estimate to Buyer within thirty (30) days of receipt of Buyer's request. Following Buyer's receipt of Seller's cost estimate, Buyer may thereafter require Seller deliver such Future Environmental Attributes, and Seller shall do so, at Buyer's expense; provided, however, that Buyer may further thereafter request Seller to cease delivery of some or all of such Future Environmental Attributes, and after the effective date of such request, Seller shall cease delivering as requested by Buyer.

(A) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the Environmental Attributes to Buyer or its respective designee(s).

(B) Ownership by Buyer of Environmental Attributes shall include any Future Environmental Attributes that are reserved or "banked" throughout the Term of this ESA, but not used, sold, assigned or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law. Buyer shall have the exclusive right to transfer Environmental Attributes to Retail Customer, or retain the Environmental Attributes and retire the Future Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(C) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to Environmental Attributes and certification

requirements under any applicable federal, state or regional program or Applicable Law. Except as otherwise provided in Section 8.1 and Section 22.22, Tax Benefits in effect on the Execution Date of this ESA or any success or other provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(D) Neither Seller nor Buyer will have any liability to the other for any act, omission, misrepresentation, or breach (other than an act or omission due to the failure to pay fees, charges or expenses by the responsible Party), by an entity that certifies the characteristics or delivery of a REC, or the qualification of the Project as a renewable energy facility, under Applicable Law. The certifying entity may include a Governmental Authority, WREGIS or other generation information system, an independent auditor or other third party.

(E) Seller shall not report in any public communication, or under any program, that any of the Future Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer or Retail Customer. Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Future Environmental Attributes for Buyer to own, hold and manage in Buyer's or Retail Customer's own name and account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Future Environmental Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Future Environmental Attributes, RECs, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy, and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. To the extent that any such public communication is allowed under Section 13.1, in any public communication concerning the Project, Project Energy or the Future Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Future Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Project Energy.

## ARTICLE 12
## Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller enters into an assignment for the benefit of creditors;

(3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller's voluntarily taking advantage of any such law by answer or otherwise;

(4) The sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this ESA, or other date mutually agreed to by the Parties in writing;

(7) Seller's assignment of this ESA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) Seller's failure to make any payment required, unless remedied within thirty (30) days of receipt of notice of such failure;

(3) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) After the Commercial Operation Date, (x) the Project fails to achieve ninety percent (90%) of the Guaranteed ESS Capacity during annual performance testing conducted pursuant to Section 10.5(C), provided, that in no case shall such test be performed when major equipment is not operational; and (y) Seller fails to restore ESS Capacity to above ninety percent (90%) of the Guaranteed ESS Capacity

referenced in Section 3.12 within one hundred eighty (180) days of such failure;; or

(6) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice.

(7) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including, but not limited to the Interconnection Agreement) required to make Product available at the Point of Delivery;

(3) Seller's failure to maintain in effect any agreements required to make Product available at the Point of Delivery;

(4) Seller's failure to comply with any other material obligation under this ESA, which would result in a material adverse impact on Buyer; or

(5) Subject to Section 7.3, Seller fails to timely register the Project as necessary, so that the Project is compliant with reporting requirements related to Future Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law with respect to Future Environmental Attributes in accordance with the terms of this ESA;

(6) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty-five percent (85%) over any twenty-four (24) consecutive Months during the Term excepting to the extent due to the MPT Failure (which exception may apply only twice during the Term), provided that the 30-Day cure period indicated in Section 12.1(B) does not apply and Seller

remediates the cause of the shortfall of Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the eighty-five percent (85%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of a MPT Failure of the steps that Seller is taking to remediate the failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving such MPT Failure.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this ESA, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise;

(4) Buyer's assignment of this ESA except as permitted in accordance with Article 18; or

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this ESA) shall constitute an Event of Default upon the failure of Buyer to cure

within twenty (20) Days of written notice from Seller to Buyer.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Buyer's actual fraud, waste, tampering with Seller-owned facilities or other material misrepresentation or misconduct in connection with this ESA or the operation of the Project;

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period; or

(3) Any representation or warranty made by Buyer in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term, if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an uncured Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this ESA from the Defaulting Party as set forth in Section 12.3(B); (ii) exercise its rights pursuant to Section 12.5; (iii) suspend performance; (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security; and (v) exercise its rights to terminate this ESA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer; and provided, further, and without limiting any rights of the Non-Defaulting Party to terminate this ESA at any time as permitted hereunder, that if an Event of Default has occurred before the Commercial Operation Date and written notice thereof given by the Non-Defaulting Party and such Event of Default has continued uncured from the date of the Event of Default for a period of one hundred eighty (180) Days without the Commercial Operation Date having occurred, then either Party may thereafter terminate this ESA as provided for in Section 12.4. If Seller is the Defaulting Party, the calculation of the Buyer Termination Payment shall include the Replacement ESS Costs notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which may include Future Environmental Attributes.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of any actual or threatened breach of any material performance obligation of the other Party under this ESA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this ESA shall be cumulative of and shall be in addition to every other right or remedy provided for in this ESA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, either Party may send the other Party an invoice for such damages or other amounts as are due to the Party providing the invoice at such time from the other Party under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this ESA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE 13
## Contract Administration and Notices

13.1 Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered, mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be

simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this ESA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this ESA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this ESA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than three (3) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, dispatch and scheduled Discharge Energy delivered, Charging Energy received, and House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) quarterly construction progress reports until the start of construction and monthly thereafter in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B); and (ii) reports of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this ESA; and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this ESA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, but not earlier than forty-five (45) days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; or (iv) does not, except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this ESA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller , in which case

Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this ESA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this ESA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

## ARTICLE 14
## Force Majeure

14.1 Definition of Force Majeure Event.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises after the Execution Date that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be

prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic, including COVID-19, shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this ESA is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws or material or Serial Defects; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of three hundred sixty five (365) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this ESA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this ESA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Discharge Energy from the Project or to deliver Charging Energy to the Project or otherwise prevents the ability of the ESS to deliver Product, then the hours during which the Force Majeure Event occurs shall be excluded from the payment calculations as set forth in Section 8.1.

## ARTICLE 15
## Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this ESA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA.

(C) The obligations of Seller under this ESA are valid and binding obligations of Seller.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any material violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have upon generation of Discharge Energy, good and marketable title to the Future Environmental Attributes, when and if applicable, immediately prior to delivery to Buyer.

(K) Seller has not sold, delivered or transferred the Future Environmental Attributes, when and if applicable, to any other Person, in whole or in part.

(L) Subject to Section 7.3, all right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) [Reserved]

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this ESA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(P) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(Q) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good

standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this ESA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA.

(C) This ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

## ARTICLE 16
## Insurance

16.1 Evidence of Insurance.

(A) Except with respect to builder's risk insurance, evidence of which shall be provided to Buyer within five (5) Business Days after the start of construction, Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this ESA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this ESA shall cover occurrences during the Term of this ESA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this ESA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this ESA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional

insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

ARTICLE 17
Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Each Party shall at all times comply with all Applicable Laws and Seller shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the ESA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this ESA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval, in connection with (i) the execution and performance of this ESA; (ii) a final order or other regulatory determination from the NMPRC (A) that Buyer may recover the costs; (B) approving revisions to the Special Service Contract; and (C) any waivers as set forth in Buyer's request for approval of this ESA; (iv) location of the Project and (v) the execution and performance of the additional renewable energy procurement under the Special Service Contract (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to a motion for rehearing or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller, Retail Customer and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this ESA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This ESA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if neither Buyer nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made by Buyer or Retail Customer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this ESA should remain in effect. Upon automatic termination, this ESA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA. If the Parties and Retail Customer are unable to mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties and Retail Customer conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by December 31, 2025 ("**Regulatory End Date**"), then following an additional one hundred eighty (180) Day period after the Regulatory End Date (solely if such Regulatory End Date has not previously been extended; otherwise, no such one hundred eighty (180) Day period shall apply), the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the end of such additional one hundred eighty (180) Day period (or no later than fifteen (15) Days after the Regulatory End Date, if the Regulatory End Date has previously been extended) regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the last date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect. Provided, that the Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that a Party contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability

standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

17.6 Interconnection Agreement. The Parties acknowledge that the Interconnection Agreement is not currently in compliance. The Seller shall use commercially reasonable efforts to bring the Interconnection Agreement back into compliance; provided that, to the extent Seller has not been successful by the Regulatory End Date (as may be extended pursuant to Section 17.3(B), then this ESA shall automatically terminate ten (10) Days thereafter and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person. Provided, that the Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

## ARTICLE 18
## Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this ESA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this ESA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this ESA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA.

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC

Approval of this ESA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this ESA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this ESA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this ESA with the Affiliate as if such Person had been named under this ESA; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this ESA made without fulfilling the requirements of this ESA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this ESA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this ESA or the revenues or proceeds therefrom in connection with any financing, provided that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this ESA; and further provided that Seller shall not be relieved of any of its obligations or liability under this ESA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this ESA to Seller's Senior Lenders pursuant to Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall

provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this ESA.

## ARTICLE 19
## Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000 per MW multiplied by the Guaranteed Capacity ("**Development Security"**) within the earlier of (a) ninety (90) Days after the Execution Date and (b) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed Capacity (the "**Delivery Term Security**"). Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer. Promptly after Buyer terminates this ESA as a result of Seller's failure to achieve Commercial Operation on or before the Guaranteed Start Date, Buyer will return the Development Security to Seller, less any amounts drawn against the Development Security pursuant to Section 12.10. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or Capacity Shortfall Damages and provided the Delivery Term Security. In the event that no amounts are due and owing by Seller to Buyer under this ESA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second ($92^{nd}$) day after termination of this ESA in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) days of expiration that it will be extended, Seller must provide a substitute Letter of Credit from

an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have fifteen (15) Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this ESA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this ESA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this ESA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this ESA, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this ESA.

## ARTICLE 20
## Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential

damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives

any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21
## Governmental Charges

21.1 Allocation of Governmental Charges. In the event of any contradiction between this Section 21.1 and Section 9.7, Section 9.7 shall control. In the event of any contradiction between this Section 21.1 and Section 22.2, this Section 21.1 shall control. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer the Product that are imposed prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of the Product that are imposed at and from the taking of the Product by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

## ARTICLE 22
## Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this ESA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors

for noncompliance by Buyer, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this ESA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this ESA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Certain Third Party Beneficiary Rights.

(A) In executing this ESA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly permitted in this ESA in Section 22.4(B), nothing in this ESA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this ESA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this ESA, Retail Customer is an express third party beneficiary to this ESA. The provisions of this ESA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as an express third party beneficiary hereof as if it were a Party hereto. In addition and without limiting the foregoing, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer a copy of any notice of a change in the location of the Site provided to Buyer under Section 3.3;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project; and

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the ESA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the ESA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed. provided, that, the rights granted to the Retail Customer pursuant to this Section 22.4(B) shall

expire, terminate and be of no further force and effect upon the expiration or termination of the Special Service Contract, regardless of the cause. Any termination or expiration of the Special Service Contract shall not otherwise affect the rights and obligations of the Buyer and Seller as set forth in this ESA.

(C) Buyer shall provide prompt notice (and in any case within five (5) Days) to Seller of any termination of the Special Service Contract.

22.5 Relationship of the Parties.

(A) This ESA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to its employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this ESA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this ESA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the ESA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this ESA with a view toward effecting the purposes of this ESA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this ESA constitute the entire agreement between Buyer and Seller with respect to its subject matter and

shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this ESA, this ESA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7. Buyer shall request expedited process for any NMPRC approval of any amendment if any such approval is deemed necessary.

22.10 Binding Effect. This ESA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this ESA are for ease of reference only and do not constitute a part of this ESA.

22.12 Counterparts. This ESA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this ESA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this ESA shall be brought in the United States District Court for the District of New Mexico; the parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS ESA. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "**Receiving Party**" refers to the Party receiving information from the other Party.

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, tax credit

transferees, potential Lenders, technical advisors, contractors, consultants, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this ESA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this ESA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this ESA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this ESA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this

ESA that relates solely to this ESA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this ESA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information . In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall notify Buyer as soon as reasonably practicable of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("**Data Breach**") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access.

(A) Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this ESA and the Future Environmental Attributes that are generated under this ESA and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA and the creation, sale or retirement of such Future Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an

irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this ESA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this ESA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this ESA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this ESA constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this ESA (a) will be considered a lease

under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the ESA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the following provisions apply for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8-K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial

information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel, is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

(F) Seller shall provide Buyer all such information as Buyer shall reasonably request for Buyer or Retail Customer compliance with the Scope Reporting Rule.

22.19 Telephone Recording. Each Party to this ESA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this ESA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this Agreement in accordance with Section 12.4. In connection with the performance

of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any actual, potential, threatened, or requested breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Governmental Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. Seller will ensure that the contractors and subcontractors it retains in connection with this PPA expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to an Event of Default under Section 12.1(B), Buyer shall have no obligation to make further payments hereunder following termination of this Agreement other than all payments due to Seller during the Term of this Agreement as of such termination date.

22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party to be responsible for, exporting and importing any equipment or property Seller or Seller Parties require to perform the services under this Agreement, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority.

(B) In no instance may Seller or Seller Parties list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List, or (ii) originated, offloaded or transferred to a different ship or carried in any Sanctioned Territory.

(D) The Seller shall provide to Buyer all Trade Control related documentation as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with) or respond to inquiries from any Government Authority in relation to, Trade Controls.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not (directly or

indirectly) engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure that the Seller Parties it retains in connection with the performance of its obligations under this Agreement expressly agree in writing to the trade controls undertakings, representations, and warranties substantially similar to the provisions in this Section 22.21.

(H) Notice. If (a) Seller becomes aware that any breach of the terms of this Section 22.21 has occurred, is likely to occur, or (b) Seller or any Seller Party has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days of obtaining knowledge thereof.

(I) Excusal and Release. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal or not reasonably practicable under Sanctions.

(J) Subject to Section 12.1(B)(7), Buyer may terminate this Agreement, within five (5) days and without further liability, upon written notice to the Seller, if the Seller has breached this Section 22.21 (A), (B), (C), or (E) in which case, the Buyer shall have no obligation to make further payments following termination of this Agreement; provided that to the extent permitted by Sanctions, Buyer has made all payments due to Seller during the Term of this Agreement as of the termination date.

22.22 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, Retail Customer's load or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this ESA, the Parties and Retail Customer shall negotiate in good faith to amend this ESA to resolve such changes in order to effect performance of this ESA, at the least possible cost to the Parties and Retail Customer, consistent with this ESA, including Section 7.4(A).

*[Signature page(s) follow]*

IN WITNESS WHEREOF, the Parties have caused this ESA to be duly executed as of the date first above written This ESA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

Name Omni Warner

Title VP

FOUR MILE MESA STORAGE, LLC

By _____

Name Hy Martin

Title Authorized Signatory

**EXHIBIT A**
(to Energy Storage Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: Four Mile Mesa

   Location: Kirtland, New Mexico

2. Owner (if different from Seller):

3. Operator: Seller or an Affiliate thereof

4. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage

   b. Total number of units at the Project: TBD

   c. Total nameplate capacity (AC): 100 MW

   d. Total capacity at point of delivery: 100 MW

   e. Additional technology-specific information: Lithium ion BESS

5. Project Schedule:

| Key Milestone | Date |
|---|---|
| LGIA Execution | December 31, 2025 |
| Major Equipment Supply Agreements Executed | June 30, 2026 |
| Discretionary Permits | September 1, 2026 |
| Close Financing | September 1, 2026 |
| 30% Design Complete | July 1, 2026 |
| Start of Project Construction | October 15, 2026 |
| First Major Equipment Delivered to Site | December 15, 2026 |
| Interconnection In-Service Date | March 15, 2027 |
| Commissioning Start Date | May 1, 2027 |
| Expected Commercial Operation | December 31, 2027 |
| Guaranteed Start Date | September 30, 2028 (unless otherwise extended) |

6. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the Energy Storage Agreement.

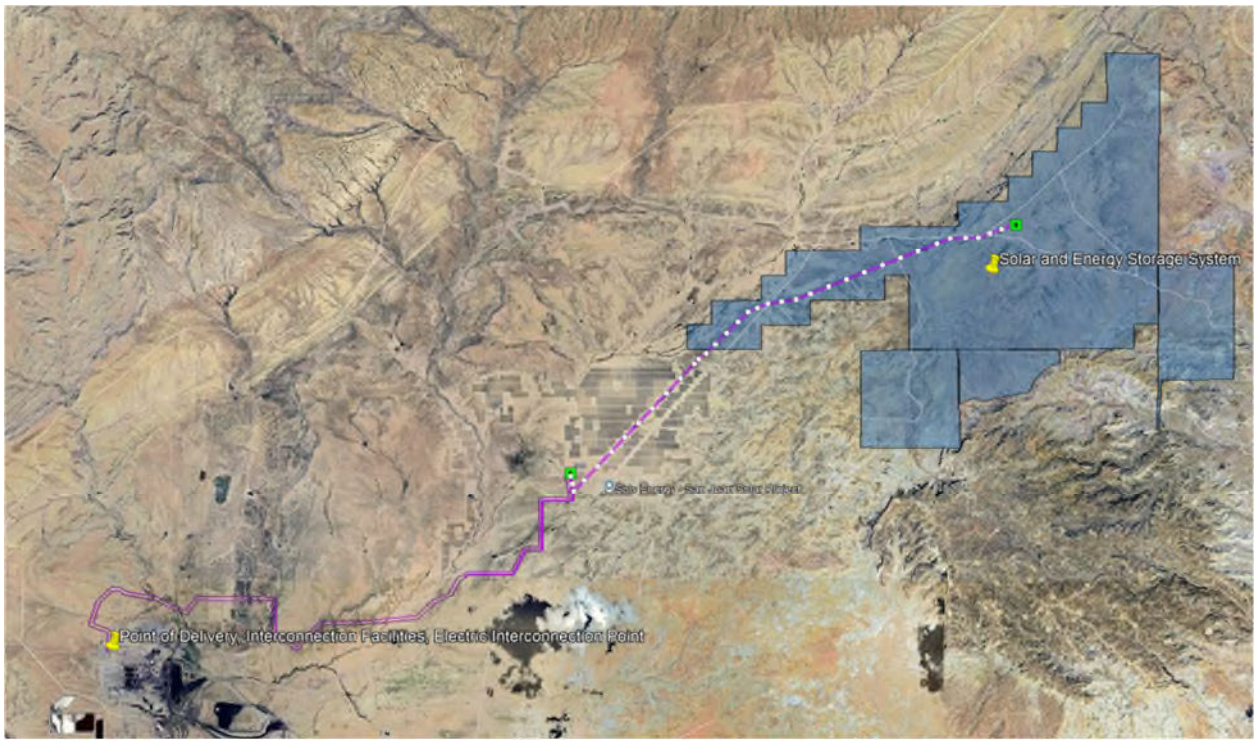

**EXHIBIT B**
(to Energy Storage Agreement)

**ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagrams and communications and telemetry diagrams of the Project. The diagrams indicate the following:

   - Interconnection Facilities;
   - the network upgrades;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
   - communications and telemetry configuration with associated redundancy (i.e. internet sources and OPGW);
   - the House Energy power source and associated dedicated electric meter; and
   - redundancy, ownership and location of meters and associated CTs and PTs.

2. The Standard Large Generator Interconnection Agreement between the Project and both Tucson Electric Power and Public Service Company of New Mexico was executed on September 9, 2022. The project suspended the LGIA effective 9/6/2022. The anticipated unsuspension of the IA is scheduled to occur in January 2025 with an expected in service date of the interconnecting facilities of January 2027.

3. Seller Shall provide any necessary updates upon execution of the interconnection agreement.

4. Point of Delivery is SAN JUAN NORTH 345 KV SWITCHYARD.

**EXHIBIT C**[1]
(to Energy Storage Agreement)

**DESCRIPTION OF SITE**
PARCEL SURVEY FOR
FOUR MILE MESA PROJECT

SURVEYOR'S DESCRIPTION of: SAN JUAN COUNTY, State of New Mexico, and being more particularly described as follows:

New Mexico Principal Meridian T. 31 N., R. 14 W, Sec. 24: E½ (341.97 acres); E½ SW¼ (80.00 acres); SW¼ SW¼ (40.00 acres); Sec. 25: ALL (658.51 acres); Sec. 26: S½ (320.00 acres); E½ NE¼ (80.00 acres); SW¼NE¼ (40.00 acres); Sec. 27: S½ S½ (160.00 acres); Sec. 32: SE¼ (159.89 acres); Lot 2 (39.95 acres); Sec. 33: NE¼ (160.00 acres); NE¼ NW¼ (40.00 acres); S½ NW¼ (80.00 acres); N½ SW¼ (80.00 acres); Sec. 34: E½ (319.30 acres); N½ NW¼ (80.00 acres); SW¼ NW¼ (40.00 acres); Sec. 35: ALL (638.76 acres); Sec. 36: ALL – LESS and EXCEPT Lot 7 (604.08 acres)

The above described Tracts of Land contains 3,962 acres more or less in area.

[1] NTD: To be updated ~60 days prior to COD.

**EXHIBIT D**
(to Energy Storage Agreement)
**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**Notices:**

**Delivery Address:**

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

**Invoices:**

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:
PNMEAM@pnmresources.com

**Scheduling:**

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

**Payments:**

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

**Wire Transfer:**

Wells Fargo Bank
ABA# [●]
Albuquerque, New Mexico
ME Whsle Pwr Depository: [redacted]
Attn: EA-Wholesale Power Marketing

**FOUR MILE MESA STORAGE, LLC**

**All Notices/Invoices:**

**Delivery Address:**

Four Mile Mesa Storage, LLC
c/o DESRI Asset Holdings, L.L.C.
575 Fifth Avenue, 24th Floor
New York, NY 10017
Attn: General Counsel
Email: Notices@desri.com
Hy.martin@desri.com

Mailing Address (if different from above):
N/A

**Wire Transfer: To Be Provided**

**With additional Notice of an Event of Default, termination and other legal notices to:**

Four Mile Mesa Storage, LLC
c/o DESRI Asset Holdings, L.L.C.
575 Fifth Avenue, 24th Floor
New York, NY 10017
Attn: General Counsel
Email: Notices@desri.com
Hy.martin@desri.com
With a copy to (which shall not constitute notice):

Foley & Lardner LLP
150 East Gilman Street, Suite 5000
Madison, WI 53703
Attn: R. Lynn Parins
Email: lparins@foley.com

**Project Manager:**

**Contract Manager:**

Public Service Company of New Mexico
Attention: [●]
2401 Aztec Rd. NE
Albuquerque, NM 87107
Telephone: (505) [●]
Fax: (505) [●]

**With additional Notice of an Event of Default, termination and other legal notices to:**

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

**With a copy to:**

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

[●]
Attn: [●]
Address: [●]

**EXHIBIT E**
(to Energy Storage Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

| PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION | GOVERNMENTAL ENTITY |
|---|---|
| NEPA Finding of No Significant Impact | Bureau of Indian Affairs Southwest Region Office |
| Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES) | Environmental Protection Agency (EPA) |
| San Juan County New Commercial/Additional Structures Permit | San Juan County |
| National Historic Preservation Act Section 106 Finding of Eligibility, Consultation and Approval | New Mexico State Historic Preservation Office and Ute Mountain Ute Tribal Historic Preservation Office |
| San Juan County Floodplain Permit (if required) | San Juan County |
| Location Approval, per NMSA 1978, § 62-9-3 | New Mexico Public Regulation Commission |
| | |
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NOTE: Final actual permit requirements may vary from the above listings due to code and regulatory requirements as needed for Project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of this ESA.

**EXHIBIT F**
(to Energy Storage Agreement)

**COMMISSIONING AND ANNUAL TESTS**

All tests described in this Exhibit F will be conducted in accordance with equipment manufacturer's recommendations and current test procedures, including performance adjustments based upon ambient conditions. ESS Reliability Testing and Operational Reliability Testing may be run simultaneously.

**Commissioning Tests**

A. SCADA Functionality Test (or equivalent)
B. Automatic Generation Control (AGC) (or equivalent)
C. Voltage Setpoint Functionality Test
D. Historian and Data Link Functionality Tests
E. ESS Reliability Tests

**Commissioning and Annual Performance Tests**

A. ESS Unit Capabilities Tests, including:
    a. ESS Capacity Test including ESS Roundtrip Efficiency Determination
    b. ESS Response Shortfall Test
    c. Frequency Response Capability Test

**Commissioning Tests**

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

**A. SCADA Functionality Test**

**Purpose:**
This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available reasonably available and determinable points) and Buyer's Power Operations Engineering (POE). This test must be performed prior to commercial operation of the Energy Storage System (ESS).

**Procedure:**
Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall then contact Buyer's POE Team in advance to submit a database modification request (DBMOD) and request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. Testing phases 1-3 (below) require only POE contacts, but phase 4 will also require Buyer's Operator support.

The test shall include, but is not limited to, the following verification:

1) Status points
   - Verify POE is receiving the intended state of Seller's switches and breakers
   - Verify POE can see and change the value of states of Seller's switches and breakers
   - Verify the functionality of the local/remote mode indication status

2) Analog points
   - Verify POE is receiving the intended value
   - Verify POE receives a changed value
   - Verify values have the correct scaling

3) Accumulator points (as applicable)
   - Verify POE is receiving an inserted value
   - Seller reverts to original value then verifies POE receives the new value
   - Verify values have the correct scaling

4) Control points (as applicable)
   - Verify the functionality of all breakers to be controlled by Buyer's POE
   - Verify the functionality of all switches to be controlled by Buyer's POE
   - Verify POE can control all reclosers
   - Verify on-site personnel have capability of changing states and values
   - Verify the functionality of all Setpoints
   - Verify the functionality of all feedback points

Completion of this test will be acknowledged verbally between Buyer's personnel and the stakeholders involved, and confirmed by Buyer promptly thereafter in writing (which may be via email). This test must be repeated for changes for the incremental portion to the states table(s) and/or list of points.

## B. Automatic Generation Control (AGC) Functionality Test

Purpose:
This test will demonstrate the ability of the ESS to synch to AGC. This test will occur after the ESS system has energized.

System starting state:
The ESS will be in the on-line state with a SOC between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure:

Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour Operational activities.

**Remote Mode Testing**

Seller will set the ESS to REMOTE mode, and verify the unit accepts AGC.

- Operator will send a setpoint to the unit
- Validate the ESS unit responds to the setpoint
- Operator will send a setpoint above and/or below ESS operation limits
    - Validate the ESS sends alarms
    - Validate the ESS unit does not attempt to charge/discharge to the value sent

Buyer's Operator will set the AGC Control mode to MARKET:

- Validate the ESS unit responds to a DOT from CAISO

Buyer's Operator change the ESS to MARKET in AGC

- Validate the ESS unit changes the control mode
- Validate the ESS unit follows gross MW requested in Planner Pro

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG

- Hold for up to 10 minutes
- Validate the ESS unit responds to ACE of +/- 10 MW

**Local Mode Testing**

On-site personnel change the ESS to LOCAL mode

- Validate the ESS unit changes from REMOTE to LOCAL mode
- Validate the ESS unit follows gross MW requested on-site
- Validate the ESS unit does not respond to setpoint changes

System end state:
The ESS will be in the on-line state and with control mode set to LOCAL.

### C. Historian Data Link Functionality Test

The Historian Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for ESS control.

Prior to testing, the Seller shall provide a list of available data points that are reasonably required to Buyer's generation engineering team (or agreed upon third party) and assist as necessary to set up the Historian Data Link.

Seller shall prepare and submit to Buyer a Historian Data Link Functionality Test procedure no later than thirty (30) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Historian Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Historian Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

## D. ESS Reliability Testing

### D.1 Cycling Reliability

A. Purpose of Test

To demonstrate the ability of the ESS to reliably perform full charging and discharging cycles.

B. Test Procedure

The cycling reliability test shall include the following test elements:

1. the discharging of the ESS from 100% of the Maximum State of Charge to 0% of the Maximum State of Charge followed by;
2. following a prescribed period of "rest" per the OEM guidelines, the charging of the ESS from 0% of the Maximum State of Charge to 100% of the Maximum State of Charge.

C. Test Results

The cycling reliability test shall be satisfied when the ESS successfully performs three (3) full charge and discharge cycles with the ESS control system in auto without any alarms that indicate an adverse condition that impacts system operations below operating specifications/nameplate, faults, trips, or manual intervention required.

### D.2 Operational Reliability

A. Purpose of Test

To demonstrate the short-term reliability of the ESS.

B. Test Procedure

The ESS shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system. The Parties shall work in good faith to combine the tests outlined in E.1 herein such that they will be performed at the same time.

C. Test Results

The operational reliability test shall be satisfied when the ESS remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any alarms, faults, trips, or manual intervention required.

**Commissioning and Annual Performance Tests**

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the ESA) throughout the term of the ESA.

**E. ESS Unit Capabilities Testing**

E.1 ESS CAPACITY TEST

E.1.1 General

The ESS Capacity Test ("**ESS Capacity Test**" or "**ECT**") is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

E.1.2 Requirements Applicable to all ESS Capacity Tests

A. Purpose of Test. Each ECT shall:

(1) verify compliance with the Guaranteed ESS Capacity or otherwise determine any lower ESS Capacity for the purposes of this ESA;

(2) determine the Roundtrip Efficiency (RTE) of the ESS;

B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

(1) discharge time (minutes);

(2) ESS Charging Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy In");

(3) ESS Discharge Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy Out");

(4) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to the Point of Delivery, in MWh ("Point of Delivery Energy Out");

(5) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh ("Point of Delivery Energy In");

C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

D. Test Elements and Sequence. Each ECT shall include the following test elements:

(1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);

(2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

(3) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;

(4) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity;

(5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

(1) General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor. In the event the system is outside of 0.99 to 1.01 adjustments may be made to the reported value as agreed upon between the parties. Voltage deviations may be within 2% of the Point of Delivery voltages, with the Seller agreeing to work in good faith

to make necessary adjustments to match such voltages.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section F.1.2.F of these ESS Capacity Test Procedures.

(3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible. In no event will the test be performed in ambient temperatures above 50C or below -20C. De-rates are expected between ambient temperatures below -10C and above 40C.

(4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.

(5) Balancing. Seller, at its sole discretion, and subject to coordination with market operations, shall be permitted to take the system offline for balancing activities prior to test.

F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section F.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:

(1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for the ESS Electric Meter Device readings as well as

each required test result parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT;

(3) The ESS Capacity as determined by the ECT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section F.1.2.F of this ESS Capacity Test Procedure.

H. Supplementary ESS Capacity Test Protocol. No later than forty-five (45) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the "Supplementary ESS Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.

J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) excluding the rest period between charge and discharge cycles and the ESS Meter Energy In (MWh-AC) as below:

$$Roundtrip\ Efficiency\ (\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})} \times 100\%$$

F.2 ESS RESPONSE SHORTFALL TEST

**A. Purpose of Test:**

1. Determine the System Charge Latency of the ESS
2. Determine the Charge Ramp Rate of the ESS
3. Determine the System Discharge Latency of the ESS
4. Determine the Discharge Ramp Rate of the ESS

**B. Test Conditions:**

The ESS Facility will be in the on-line state at between 20% and 80% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. This test shall not cause the ESS to charge from the grid. The parties acknowledge that the existing metering regime as required by Buyer transmission may result in latency impacts, in which case Buyer and Seller shall work in good faith to amend this ESA in a commercially reasonable manner.

**C. Test procedure:**

**Measured Charge Latency:**

1. Send an active power charge command of PMAX to charge the batteries
2. The time measured from when the ESS receives the PMAX charge command until the power measured at the ESS Electric Metering Device changes from 0 MW to at least 1% of charge PMAX (subject to any ramp related restrictions imposed by the Transmission Provider) shall be the Actual System Charge Latency

**Measured Charge Ramp Rate:**

1. Send an active power charge command of PMAX to charge the batteries
2. The differential in MW of ESS Charging Energy divided by the time measured to ramp from 1% to charge PMAX (subject to any ramp related restrictions imposed by the Transmission Provider) with a plus-or-minus the greater of 2MW and two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Charge Ramp Rate.

**Measured Discharge Latency:**

1. Send an active power discharge command of PMAX to discharge the batteries
2. The time measured from when the ESS receives the PMAX discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge PMAX (subject to any ramp related restrictions imposed by the Transmission Provider) shall be the Actual System Discharge Latency

**Measured Discharge Ramp Rate:**

1. Send an active power discharge command of PMAX to discharge the batteries
2. The differential in MW of ESS Discharge Energy divided by the time measured to ramp from 1% to discharge PMAX (subject to any ramp related restrictions imposed by the Transmission Provider) with a plus-or-minus the greater of 2 MW and two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Discharge Ramp Rate.

**D. Determination of ESS Response Shortfall:**

The calculation below will demonstrate the determination of the ESS Response Shortfall used to determine ESS Response Shortfall Damages according to Section 3.13. For clarity, any occurrence of an Actual System Charge Latency Shortfall, an Actual System Discharge Latency Shortfall, an Actual Discharge Ramp Rate Shortfall, or an Actual Charge Ramp Rate Shortfall shall be considered an ESS Response Shortfall that shall result in an ESS Response Shortfall Damage in accordance with Section 3.13. An ESS Response Shortfall Damage shall be due for each instance in which any of the following equations result in a positive value.

i. An "Actual System Charge Latency Shortfall" shall be calculated, which shall be equal to:

*Actual System Charge Latency Shortfall = Max (Guaranteed System Latency, Actual System Charge Latency) - Guaranteed System Latency*

An "Actual Charge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

*Actual Charge Ramp Rate Shortfall = Max (Guaranteed Charge Ramp Rate, Actual Charge Ramp Rate) - Guaranteed Charge Ramp Rate*

ii. An "Actual System Discharge Latency Shortfall" shall be calculated, which shall be equal to:

*Actual System Discharge Latency Shortfall = Max (Guaranteed System Latency, Actual System Discharge Latency) - Guaranteed System Latency*

iii. An "Actual Discharge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

*Actual Discharge Ramp Rate Shortfall = Max (Guaranteed Discharge Ramp Rate, Actual Discharge Ramp Rate) - Guaranteed Discharge Ramp Rate*

For the purposes of these equations Guaranteed Charge & Discharge Ramp Rate means either the Guaranteed values in Section 3.12 or such other Buyer selected lesser ramp rate values per this Section F.2 of this Exhibit F.

**F.3 Frequency Response Capability Test**

## A. Purpose of Test:

Demonstrate that the Energy Storage System is able to react to simulated changes in frequency applied by injecting a Frequency Profile at the Site Controller level.

## B. Definitions:

| Term | Value/Meaning |
|---|---|
| Guaranteed PMAX Charge Power | 101.6 MW |
| Guaranteed PMAX Discharge Power | 101.6 MW |
| Guaranteed Frequency Response | 20 MW / 0.1 Hz |
| Point of Guarantee | Battery pack AC terminals |
| Point of Measurement | Energy Storage System metering device at 34.5 kV bus |
| CT Error | 0.3 %. The CT Error should be the error of the Current Transformer used during the test. |
| PT Error | 0.3 %. The PT Error should be the error of the Potential Transformer used during the test. |
| Meter Error | 0.1 %. The Meter Error should be the error of the Meter used during the test. |
| Loss Adjustment Factor | 1.6 %.<br>The Loss Adjustment Factor shall take into account all electrical losses, including cabling, switchgear, and transformer losses (load and no load) between the Point of Measurement and Point of Guarantee |
| $FreqLow$ | Low Frequency deadband setpoint |
| $FreqHigh$ | High Frequency deadband setpoint |
| $\Delta FreqLow$ | Frequency delta for low frequency |
| $\Delta FreqHigh$ | Frequency delta for high frequency |
| $\Delta Power\ Low$ | Power change for low frequency support |
| $\Delta Power\ High$ | Power change for high frequency support |

## C. Pre-Test Conditions:

1. If the ambient temperature is below 20°C during the 24 hours prior to the Test, the Energy Storage System shall be pre-heated for 8 hours prior to the test. If the ambient temperature is above 45°C, the Test shall be postponed until the temperature is expected to drop below 45°C for a minimum of 24 hours.
2. Charge or discharge the Energy Storage System so that its SOE is between 20% and 80%.
3. If a ramp rate is required, the Energy Storage System should be configured with the

appropriate ramp rate.
4. The Energy Storage System should report available discharge power that is equal to or greater than the Guaranteed PMAX Discharge Power (subject to reduction pursuant to the tests set forth in Sections F.1 or F.2 of this exhibit).
5. The Energy Storage System should report available charge power that is equal to or greater than the Guaranteed PMAX Charge Power (subject to reduction pursuant to the tests set forth in Sections F.1 or F.2 of this exhibit).
6. A frequency injection profile shall be applied at the Site Controller in the form XX test points. The frequency profile shall be agreed upon between the Parties prior to the test. The Site Controller shall be configured to source the frequency readings from the uploaded profile.
7. The charge portion of the test shall be conducted when energy available from the grid is expected to be greater than the Guaranteed PMAX Charge Power unless specified otherwise by Buyer. The Parties shall ensure that the Energy Storage System is not limited by the grid in its ability to discharge up to the Guaranteed PMAX Discharge Power throughout the duration of the test.

**D. Test Procedure:**

1. Confirm the Energy Storage System has zero output.
2. Initiate the reading from the Frequency Profile.
3. Wait for the full execution of the profile.

**E. Recorded Values:**

1. Battery Real Power (MW)
2. Grid Frequency (Hz)

**F. Acceptance Criteria:**

For each under-frequency event in the profile with a deviation from nominal of Frequency Low Deviation, in steady state:

*Expected PowerUnder-Freq * (1 – Meter Error) ≤ Battery Real Power ≤ Expected PowerUnder-Freq * (1 + Meter Error)*

Where the expected Energy Storage System response is defined as:

$$Expected\ Power_{Under\text{-}Freq} = \text{Min}\ [(\Delta PowerLow / \Delta FreqLow) * Frequency\ Low\ Deviation, Guaranteed\ Discharge\ PMAX]$$

Frequency Low Deviation = Simulated Frequency – FreqLow

For each over-frequency event in the profile with a deviation from nominal of *Frequency High Deviation*, in steady state:

$$Expected\ Power_{Over\text{-}Freq} * (1 - Meter\ Error) \leq Battery\ Real\ Power \leq Expected\ Power_{Over\text{-}Freq} * (1 + Meter\ Error)$$

Where the expected Energy Storage System response is defined as:

*Expected Power*$_{Over\text{-}Freq}$
= Max [(ΔPowerHigh / ΔFreqHigh)* *Frequency High Deviation, -Guaranteed Charging PMAX*]

*Frequency High Deviation = Simulated Frequency – FreqHigh*

**G. Grid-Forming Capabilities Tests (LATER)**

- Synthetic Inertia
- Voltage Persistence

**EXHIBIT G**
(to Energy Storage Agreement)

**INSURANCE COVERAGES**

Seller shall obtain and maintain the following insurance coverages, at a minimum:

**A. Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

**C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

**D. Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E. Network Security and Privacy Liability**. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration,

corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

**F. Property Insurance**. During construction and operation, Seller shall provide or arrange the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost, subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

**EXHIBIT H**
(to Energy Storage Agreement)

**AVAILABILITY GUARANTEES**

**Section 1. Definitions.**

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the ESA.

"**Actual ESS Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

"**Aggregate ESS Availability Damages Cap**" has the meaning set forth in Section 2.1(C) of this Exhibit.

"**Annual ESS Availability Damages Cap**" has the meaning set forth in Section 2.1(C).

"**Annual Report**" has the meaning set forth in Section 2.3 of this Exhibit.

"**ESS Availability Damages**" has the meaning set forth in Section 2.1(B) of this Exhibit.

"**ESS Available Hours**" means for a relevant Commercial Operation Month, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Year, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Year. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Excused Hours**" means, in any Commercial Operation Year, the aggregate Seller Excused Hours for such Commercial Operation Year to the extent that the ESS is affected during such hours; provided that, for purposes of the Guaranteed ESS Availability Percentage, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Period Hours**" means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year, provided, that for any leap year, ESS Period Hours means eight thousand seven hundred eighty-four (8,784) hours.

"**ESS Unavailable Hours**" means those hours, other than ESS Excused Hours, that the

ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Discharge Energy to the Point of Delivery or accepting Charging Energy at the Point of Delivery. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Guaranteed ESS Availability Percentage**" has the meaning set forth in Section 2.1(A) of this Exhibit.

**Section 2. Availability Guarantees.**

1. ESS Availability Guarantee.

(A) ESS Availability Guarantee. Seller guarantees that the ESS shall achieve an Actual ESS Availability Percentage equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date ("**Guaranteed ESS Availability Percentage**").

(B) ESS Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed ESS Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to 50% of ESS Payment Rate per MWh below the Guaranteed ESS Availability. A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

(C) ESS Availability Damages Cap, Termination and Cure Rights. The total ESS Availability Damages payable by Seller for failure to meet the Guaranteed ESS Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to One Hundred Thousand Dollars ($100,000) per MW of Guaranteed ESS Capacity ("**Annual ESS Availability Damages Cap**") and in the aggregate at a value equivalent to One Hundred Ninety Two Thousand Dollars ($192,000) per MW of Guaranteed ESS Capacity; *provided*, that in the event of (a) an MPT Failure or (b) a material serial defect not generally known in the energy storage industry, the aggregate damages shall not exceed a value equivalent to Three Hundred and Twenty Thousand Dollars ($320,000) per MW of Guaranteed ESS Capacity ("**Aggregate ESS Availability Damages Cap**") over the Term of the ESA.

2. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed ESS Availability Percentage shall be the payment of damages, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the ESA. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail to meet

the Guaranteed ESS Availability Percentage.

3. Monthly Report. No later than the tenth (10th) Day of each calendar month during each Commercial Operation Year (or ten (10) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Monthly ESS Availability for the previous calendar month and the ESS Availability Damages, if any, due to Buyer (the "**Monthly Report**"). Such Monthly Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Monthly Report.

4. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the ESA.

## ATTACHMENT 1 TO EXHIBIT H

## EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES

### I. Example of Monthly ESS Availability Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

| | | Hours |
|---|---|---|
| | Monthly Hours ("MH") | 720 |
| | ESS Unavailable Hours ("EUH") | 86 |

Given these assumed facts, the Monthly ESS Available Hours for the ESS during the specific calendar month would be calculated as follows:

Monthly ESS Available Hours = MH – EUH: 634 = 720 – 86

**Monthly ESS Availability**

Given these assumed facts, the Monthly ESS Availability for the Project during the specific calendar month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Sum of Monthly Hours: 720 hours

(c) Monthly ESS Availability: (Sum of Monthly ESS Available Hours/Monthly Hours) x 100 = (634/720) x 100 = 88.1%

### II. Example of ESS Availability Damages

Example of ESS Availability Damages based on the following assumed facts:

(a) Seller's Monthly Guaranteed ESS Availability = 90%.

(b) Seller's Monthly ESS Availability = 88.1%.

(c) Seller's Guaranteed ESS Capacity = 100 MW.

Given these assumed facts, Seller calculates the ESS Availability Damages for such calendar month due to Buyer as follows:

(Seller's Monthly Guaranteed ESS Availability – Seller's Monthly ESS Availability) (the latter two expressed as a decimal) x Monthly Hours (assuming a 30-day month) x ESS Availability LD Rate x Seller's Guaranteed ESS Capacity = ESS Availability Damage

(0.90 – 0.881) x 720 x $[ ] x 100 = $[ ]

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 86 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

**EXHIBIT I**
(to Energy Storage Agreement)

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

**A.** WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Energy Storage Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

**B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

**1. GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

**(a)** Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].

**(b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty

(including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

**2. DEMANDS AND PAYMENT.**

**(a)** If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

**(b)** A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with *Section 9* below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

**(c)** After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

**(a)** it is a limited liability company duly organized and validly existing under the laws of the State of _____ and has the limited liability company power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

**(b)** no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and

**(c)** the execution, delivery and performance of this Guaranty has been duly and validly authorized by all limited liability company proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES;**

**(a)** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**(b)**

**5. AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6. WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

**(a)** Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and , for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty; (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (viii) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

**(b)** No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

**(c)** Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

**7. REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

**8. TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

**9. NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

| TO GUARANTOR: * | TO COUNTERPARTY: |
|---|---|
| [●]*Attn:* Treasurer | [●]*Attn:* |
| [Tel: [●] -- for use in connection with courier deliveries] | [Tel: [●] -- for use in connection with courier deliveries] |

Any Notice given in accordance with this *Section 9* will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date,

and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10. MISCELLANEOUS.**

**(a)** This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.

**(b)** This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.

**(c)** This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

**(d)** The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

**(e)** Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**(f)** Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

**(g)** COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND

VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

**1.** **THIRD PARTY BENEFICIARY RIGHTS.** This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[●]

By:_____

Name:_____

Title:_____

**EXHIBIT J**
(to Energy Storage Agreement)

**COMMERCIAL OPERATION**
**FORM OF CERTIFICATION**

This certification ("Certification") of Commercial Operation is delivered by [●] ("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated [●] ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of [●] MW for [●] ([●]) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

| [●] | **[Licensed Professional Engineer]** |
|---|---|
| Signature: _____ | Signature: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| | Date: _____ |
| | License Number and LPE Stamp: _____ |

# EXHIBIT K
(to Energy Storage Agreement)

## ROUNDTRIP EFFICIENCY GUARANTEE

| Year | Annual R/T Eff |
|---|---|
| 1 | 86.50% |
| 2 | 86.15% |
| 3 | 85.80% |
| 4 | 85.45% |
| 5 | 85.10% |
| 6 | 84.75% |
| 7 | 84.40% |
| 8 | 84.05% |
| 9 | 83.70% |
| 10 | 83.35% |
| 11 | 83.00% |
| 12 | 82.65% |
| 13 | 82.30% |
| 14 | 81.95% |
| 15 | 81.60% |
| 16 | 81.25% |
| 17 | 80.90% |
| 18 | 80.55% |
| 19 | 80.20% |
| 20 | 79.85% |

**EXHIBIT L**
(to Energy Storage Agreement)

**ESS Operating Restrictions**

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions. Seller is authorized to utilize the BESS control system to enforce these ESS Operating Restrictions:

1. Except as allowed in Section 5.1(A), the amount of Discharge Energy at any point in time shall be limited to the interconnection limit minus the contemporaneous Energy production by the Solar Facility.

2. The number of ESS Equivalent Full Cycles in any Commercial Operation Year shall be limited according to Section 4.1(C).

3. The annual average state of charge percentage shall be maintained below fifty percent (50%) during any Commercial Operation Year.

4. Any delivery of Charging Energy from the grid will be in compliance with the terms of the Interconnection Agreement.

5. The ESS will be operated in accordance with Prudent Utility Practice.

In the event that Buyer's actions violate the above ESS Operating Restrictions, Buyer shall compensate Seller for actual additional maintenance requirements or remedy for any warranty claims directly related to such violation. If the Parties are unable to resolve any dispute concerning a claimed violation of the ESS Operating Restrictions, they shall proceed in accordance with Section 13.8 of the ESA.

# EXHIBIT M

(to Energy Storage Agreement)

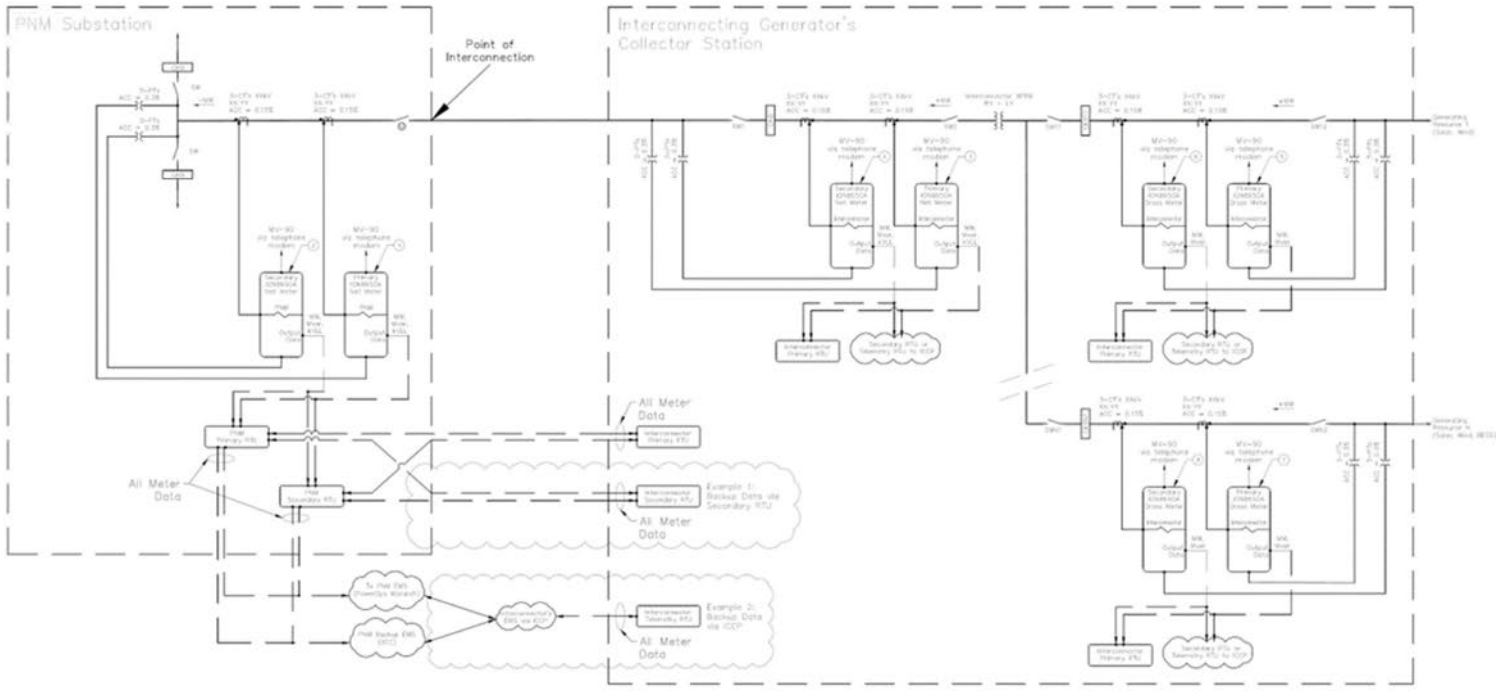
## ESS Functional Mapping

The Project's NERC verified ESS Generation Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements information is as follows:

| | Entity Name | Point of Contact | E-mail | Phone |
|---|---|---|---|---|
| Generator Owner (GO) | | | | |
| Generator Operator (GOP) | | | | |
| Scheduling Coordinator Contact (SCC) | | | | |

**EXHIBIT N**
(to Energy Storage Agreement)
**Example Interconnection Metering Diagram**

*Parties will work to develop metering configuration and procedure to account for multiple interconnection agreements that share one generation tie line.*




| Meter | Description | Metering Data Requirments | Output Data |
|---|---|---|---|
| 1 | POI Meter (Primary) | Revenue quality metering data for the After-the-Fact (ATF) metering (MV90) system and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 2 | POI Meter (Secondary) | Revenue quality metering data for the After-the-Fact (ATF) metering (MV90) system and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 3 | Facility Net Meter (Primary) | Facility net output data to primary RTU for telemetry to Control Center and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 4 | Facility Net Meter (Secondary) | Facility net output data to primary RTU for telemetry to Control Center and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 5 | Gross Meter, Resource 1 (Primary) | Resource gross output data from primary RTU for telemetry to Control Center and awarness at Operations Control Center and revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 6 | Gross Meter, Resource 1 (Secondary) | Resource gross output data from primary RTU for telemetry to Control Center and awarness at Operations Control Center and backup revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 7 | Gross Meter, Resource N (Primary) | Resource gross output data from primary RTU for telemetry to Control center and awareness at Operations Control Center and revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 8 | Gross Meter, Resource N (Secondary) | Resource gross output telemetry using ICCP or backup RTU to Control center and awareness at Operations Control Center, backup revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |

Note:

1. There must be no single point of failure for the measurement and transmission of real-time metering data to PNM's EMS. This includes networking equipment and communication paths. In the event that real-time metering data becomes unavailable or unreliable, PNM will require that the interconnected generation is disconnected until access to reliable data is re-established.
2. Retail meters are not shown on this diagram. Retail loads are not served by transmission.
3. PNM SCADA data to the facility will also include Automatic Generation Control (AGC) setpoints. PNM can also provide to the interconnecting facility SCADA data on the transmission line including: status of the sectionalizing breaker(s), disconnect switch status, and the POI meter data as applicable. A full list of SCADA data to be exchanged will be coordinated between PNM and the interconnector during design for the facilities.

REVISION

| NO. | DATE | BY |
|---|---|---|
| 0 | 11/15/23 | DJR |

ISSUED FINALIZED
ISSUE ALSO ADDED

PROPRIETARY STATEMENT

THIS DOCUMENT AND ALL PREVIOUS ISSUES ARE THE PROPERTY OF PUBLIC SERVICE COMPANY OF NEW MEXICO ("PNM") AND NEITHER RECEIPT NOR POSSESSION THEREOF IMPLIES OR TRANSFERS ANY RIGHT IN OR LICENSE TO USE THIS DOCUMENT THE SUBJECT MATTER THEREOF OR ANY DESIGN OR TECHNICAL INFORMATION SHOWN, THEREON, OR ANY RIGHT TO REPRODUCE THIS DOCUMENT OR ANY PART THEREOF. NEITHER THIS DOCUMENT NOR ANY INFORMATION CONTAINED THEREIN MAY BE COPIED, REPRODUCED, OR OTHERWISE USED OR DISCLOSED TO ANY OTHER PARTY WITHOUT FIRST OBTAINING THE EXPRESS WRITTEN PERMISSION OF PNM. THIS DOCUMENT IS PROVIDED UNDER THE EXPRESS CONDITION THAT IT WILL BE HELD IN CONFIDENCE BY THE RECIPIENT, THAT IT IS SUBJECT TO RETURN UPON DEMAND, AND THAT IT WILL NOT BE USED IN ANY DETRIMENTAL WAY.

PNM PUBLIC SERVICE COMPANY OF NEW MEXICO

Example IMD
(Interconnection Metering Diagram)
for Generation Interconnections

| | | |
|---|---|---|
| DR: DJR | | DATE: 11/15/2023 |
| CKD: CAD | OK: | SCALE: NONE |
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**EXHIBIT O**
(to Energy Storage Agreement)

**COMMISSIONING AND TESTING PROCESS**

**Section 1. Purpose.**

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the ESA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Example Interconnection Metering Diagram as outlined in Exhibit N of the ESA and complete all testing as defined in Exhibit F of the ESA.

Any delays by Buyer (including Buyer's Contract Manager, Power Operations staff and Generation Engineering staff) to timely review submissions of information and requests for approval with respect to the commissioning and testing process as outlined herein ("**Buyer Commissioning Delays**") shall result in day-for-day extensions of the Expected Commercial Operation Date pursuant to Section 3.6 of the ESA.

Figure 1 is for reference purposes only.

**Section 2. Identifying Key Points of Contact.**

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the ESA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

*Table 1 – Required Information for Point of Contact List.*

| CONTACT | Company | Group | Address | Project Role | Office Phone | Mobile Phone | E-MAIL |
|---|---|---|---|---|---|---|---|
| (name) | PNM | Generation Engineering | 2401 Aztec Rd NE Albuquerque, NM 87107 | Contract Manager | 505-241-XXXX | 505-241-XXXX | …@pnm.com |

The POC List shall identify, but not be limited to, the following:

**Buyer Team:** Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.
- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.
- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.
- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.
- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect ("**PCI**") modeling for functionality required for the participating resource schedule coordination ("**PRSC**") (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.
- Power Operations, "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

**Seller Team:** The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- Project Manager – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.
- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.
- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

- Balancing Area Authority (BAA)
- Transmission Owner (TO)
- Transmission Operator (TOP)
- Generator Owner (GO)
- Generator Operator (GOP)
- Scheduling Coordinator (SC)
- Distribution System Operator (DSO)

**Section 3. Process Overview.**

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

**Section 3.1 Commissioning Kickoff Meeting.**

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

**Section 3.2 Pre-Commissioning.**

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

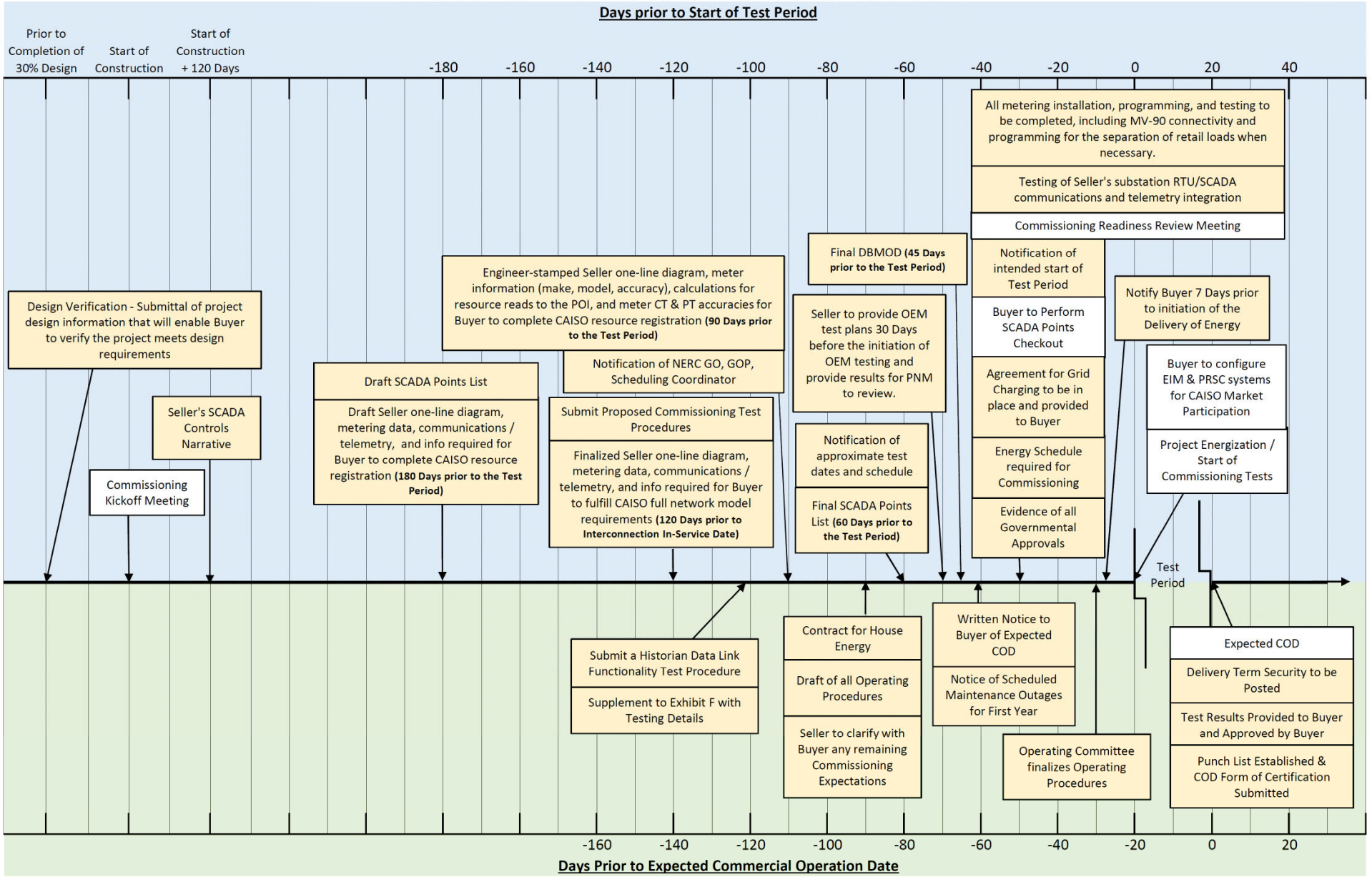
Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1:

*Table 2: Pre-Commissioning Requirements*

| Requirement | Description | Responsible Party | Contributor(s) | Timeline for initial delivery |
|---|---|---|---|---|
| **Design Verification** | Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving ESA obligations, including grid forming inverters, metering, etc.] | **Seller** | Generation Engineering | After completion of IFC design phase of project |
| **Seller's SCADA Controls Narrative** | Controls narrative detailing items related to SCADA and telemetry planning. | **Seller** | PowerOps | 120 Days after Start of Construction |
| | Final DB Mod file delivered to PowerOps. | **Seller** | PowerOps | 10 Days prior to the scheduled Test Period |
| **Seller's Substation Commissioning** | Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing. | **Seller** | Buyer's Project Manager | Prior to performance testing |
| **Metering** | All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Example Interconnection Metering Diagram in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary. | **Seller** | PowerOps | Prior to performance testing |
| **CAISO Resource Registration** | Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration. | **Seller** | PowerOps | 180 Days prior to the scheduled Test Period |
| | A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. | **Seller** | PowerOps | 45 Days prior to transmission interconnection in-service date |
| | Buyer EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps. | **PowerOps** | Seller | |
| | Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter. | **Seller** | PowerOps | No later than 30 Days prior to the scheduled Test Period |
| **Power Operations Engineering Requirements for Commissioning** (Attachment 1) | This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data. | **PowerOps** | Seller | SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period. |
| **Power Operations & WPM Systems configuration** | EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent ESS resources for CAISO market participation. | **PowerOps & WPM IT Support** | Seller | Prior to the beginning of the scheduled Test Period |
| **Agreement for Grid Charging during testing** | During testing/commissioning of facilities, agreements need to be in place with a copy provided to Buyer to allow and plan for grid charging of batteries during the testing process. These agreements will clearly define WPM, GO, GOP or their SC, BA, TO and TOP. An interim strategy of true-up and banking may be acceptable based upon the circumstances. | **Seller** | Generation Engineering | Must be complete prior to the beginning of the scheduled Test Period. |
| **Operating Procedure** | Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering. | **Seller** | PowerOps | 90 Days prior to the Commercial Operation Date |
| | An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project | **Seller/Buyer** | Seller / PowerOps / Generation | 30 Days prior to the Commercial Operation Date |

| Requirement | Description | Responsible Party | Contributor(s) | Timeline for initial delivery |
|---|---|---|---|---|
| | into Buyer's system. | | Engineering | |
| **OEM Test Plan** | The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide manufacturers' test plans and provide results for Buyer to review. Buyer may be an observer for these tests and shall be provided with the results. | **Seller** | Generation Engineering | Test plans required 30 Days before the initiation of the OEM Test Plan |
| **Test Energy Plan & Schedule** | Buyer Testing requirements defined in this document and Exhibit E – Commissioning and Annual Tests of the associated ESA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans. | **Seller** | Generation Engineering | Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period. |
| **Commissioning Readiness Review Meeting** | Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: Attachment 2: Commissioning Readiness Review | **Generation Engineering** | Seller, PowerOps | 30 Days prior to the beginning of the scheduled Test Period |

**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

**Section 3.3 Commissioning.**

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the ESA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.

- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Buyer Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the ESA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

**Section 3.4 Final Requirements Prior to COD.**

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:

  - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
  - Buyer teams responsible for review and approval of testing results include:
    - SCADA / Telemetry – Power Operations
    - AGC – Power Operations
    - Capabilities Tests – Generation Engineering
    - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

## ATTACHMENT 1 TO EXHIBIT O

## BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer prior to the beginning of the Test Period:
    a. Nameplate values: MW, MWh, round trip efficiency, etc.
    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All internet and metering based telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry associated with internet and metering communication paths must be independent of one another with no single point of failure.
    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.
    d. Telemetry for Seller's substation awareness shall include:
        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - ESS total gross values and total net values (in both MW and MVAr)
                - Gross and net values shall be provided for each resource registered with CAISO
            - Point of Delivery values – MW, MVAr
            - AGC setpoints for ESS and voltage setpoint. As well as the feedback for those setpoints.
            - Total ESS cycle count
            - Total ESS State of Charge (SOC) in both percent and MWH
            - Total real power target
            - Total full charge energy
            - Total nominal energy
            - Total energy Rem full power
            - Total max charge power

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. Testing for all AGC and voltage setpoints as defined in Exhibit F.

## ATTACHMENT 2 TO EXHIBIT O

## COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. The expected result and how might the test evaluation results affect the program.
5. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
6. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and operational testers prior to any test using personnel.
7. The fallback plan should a technical issue or potential showstopper arise during testing.
    a. The test director that will decide if an issue is a showstopper.
8. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

**EXHIBIT P**

**FORM OF LENDER CONSENT**

**CONSENT AND AGREEMENT**

This Consent and Agreement (this "***Consent***") is made and entered into as of ___ _, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

**RECITALS**

_____ ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of an energy storage facility owned by Seller and located in ____, [STATE] (the "***Solar Project***").

Seller and Buyer have entered into that certain Energy Storage Agreement, dated as of ____ (as amended, restated, supplemented or otherwise modified from time to time, the "***ESA***"), relating to the energy generated by the Solar Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the ESA (the "***Pledged ESA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

**AGREEMENTS**

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged ESA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged ESA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of solar energy facilities of comparable size to the Facility and the ability perform all aspects of the ESA; (d) has agreed in writing to be bound by the ESA and to assume all of Seller's obligations under the ESA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged ESA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of and after the date of assignment, the Facility Development Security Amount or the Operational Security, as applicable, and (iii) Buyer has not terminated the ESA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged ESA (a "*Subsequent Seller*"), may be substituted for Seller under the ESA and Buyer shall recognize such Subsequent Seller as its counterparty under the ESA and, subject to all rights and remedies of Buyer under the ESA, continue to perform its obligations

under the ESA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the ESA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the ESA. The transfer of the ESA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the PPA, Lender may cure such default by the deadline provided therefor in the PPA. Buyer will not terminate the PPA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the PPA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the PPA, (b) with respect to a default under Section 12.1(B)(8) or 22.21(A),(B),(C) or (E) of the Agreement, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the PPA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the PPA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the PPA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Solar Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. ESA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the ESA; provided that notwithstanding the foregoing, Buyer may terminate the ESA without Lender consent due to an uncured Event of Default under the ESA after the expiration of Lender's rights to cure under Section 4 hereof.

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the ESA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the ESA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the ESA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the ESA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy

of the ESA is attached hereto as ***Exhibit A*** and the ESA has not been further amended, (v) Buyer is not in default of any of its obligations under the ESA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, Seller is not in default of any of its obligations under the ESA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, there are no material disputes between Buyer and Seller under the ESA, (viii) Buyer has not assigned any interest it has in the ESA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the ESA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the ESA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the ESA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the ESA.

8. Replacement Agreement. If the ESA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the ESA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the ESA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the ESA (other than the bankruptcy of Seller or a transfer of the Facility to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 18.1 of the ESA).

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the ESA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the ESA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this

Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

**[BUYER]**

By: _____
Name: _____
Title: _____

**[LENDER]**

By _____
Its _____

ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the ESA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the ESA, as and when required under the ESA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the ESA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the ESA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the ESA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the ESA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the ESA. Seller shall have no rights against Buyer, under the ESA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

**EXHIBIT Q**

**Form of Estoppel Certificate**

**ESTOPPEL CERTIFICATE**

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Energy Storage Agreement, dated as of _____ (the "***ESA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a solar energy generating facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the ESA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the ESA have been duly authorized by all necessary action on the part of Buyer, (ii) the ESA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the ESA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the ESA is attached hereto as *Exhibit A* and the ESA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the ESA, Buyer is not in default of any of its obligations under the ESA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, Seller is not in default of any of its obligations under the ESA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, there are no material disputes between Buyer and Seller under the ESA, (viii) Buyer has not assigned any interest it has in the ESA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the ESA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the ESA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the ESA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the ESA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

[BUYER]

By: _____
Name:_____
Title:_____

Star Light Energy Storage Agreement

# PNM Exhibit GBB-6

Is contained in the following 152 pages.

# ENERGY STORAGE AGREEMENT

## STAR LIGHT ENERGY STORAGE FACILITY

**by and between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**STAR LIGHT ENERGY CENTER, LLC**

**Dated as of June 6, 2025**

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| Exhibit Q | Form of Estoppel Certificate |

# ENERGY STORAGE AGREEMENT

This Energy Storage Agreement, as may be amended from time to time, is entered into this 6th Day of June, 2025 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Star Light Energy Center, LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 700 Universe Blvd, Juno Beach, FL 33408. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a "**Party**" and collectively as the "Parties."

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission; and

WHEREAS, Seller desires to develop, design, construct, own and operate an energy storage facility, as further defined herein and in Exhibit A; and

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (as amended from time to time, "**Special Service Contract**"), between Buyer and Greater Kudu LLC. ("**Retail Customer**"), as amended from time to time, Buyer has agreed, by entering into this ESA, to procure the Product from the Project to serve Retail Customer's load; and

WHEREAS, Seller desires to sell and deliver to Buyer the Product (as defined herein) and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

## ARTICLE 1
## Definitions and Rules of Interpretation

1.1 Definitions. The following terms have the meanings set forth herein.

"**Abandonment**" means (a) prior to the Commercial Operation Date, a cessation of work and operations at or in respect of the Project for more than one hundred eighty (180) consecutive Days by Seller or Seller's contractors but only if such cessation is not in accordance with Prudent Utility Practices, caused by a Force Majeure Event or Buyer Event of Default, or is not in accordance with Seller's Project Schedule, or (b) after the Commercial Operation Date, the permanent relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this ESA.

"**AC**" means alternating electric current.

"**Accounting Standards**" has the meaning set forth in Section 22.18.

"**Actual Charge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual Discharge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual System Latency Delay**" has the meaning set forth in Exhibit F.

"**AD/CVD**" means antidumping and/or countervailing duty.

"**Additional Consents**" means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this ESA that are required from any Governmental Authority with respect to the Project.

"**Adjustment Cutoff Date**" means (i) for an Eligible Change in Tariff, the beginning of the Test Period, and (ii) for a Section 45(b) Rate Adjustment, the Expected Commercial Operation Date as may be extended under Section 3.6.

"**Affiliate**" of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity, excluding any Tax Equity Investor. For purposes of this definition, the term "control" (including the terms "controls," "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include NEP, NEOP, NEECH, NEER, and NEE, and their respective direct or indirect subsidiaries.

"**After Tax Basis**" means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment ("**Base Payment**") supplemented by a further payment ("**Additional Payment**") to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

"**AGC**" stands for "**Automatic Generation Control**" and means energy management system equipment that automatically adjusts the quantity of Charging Energy and Discharge Energy of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

"**Ancillary Services**" means operating reserves, frequency regulation, reactive supply, voltage control, frequency response, contingency reserves, and other products associated with the

storage and delivery of Energy, each to the extent that the Project is capable of providing such services in its then-current configuration.

"**Anything of Value**" includes, but is not limited to, cash or a cash equivalent (including "grease," "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

"**Applicable Law**" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction over this ESA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"**Back-Up Metering**" has the meaning set forth in Section 5.3(A).

"**Balancing Area Authority**" or "**BAA**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

"**Business Day**" means any Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday on which banks in Albuquerque, New Mexico, are permitted or authorized to close.

"**Buyer**" has the meaning set forth in the Preamble.

"**Buyer Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Buyer in connection with the termination of this ESA, to the extent such costs are not already included in Replacement ESS Costs.

"**Buyer-Requested Performance Tests**" has the meaning set forth in Section 10.5.(D).

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value, plus (c) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. To the extent the total value of the calculation in subpart (b) above is negative, the value used in such subpart (b) will be zero The Buyer Termination Payment shall not include consequential incidental, punitive,

exemplary, indirect, or business interruption damages. For termination occurring before the Commercial Operation Date, the Buyer Termination Payment shall not exceed the Development Security, minus any Delay Damages paid.

"**CAISO**" means the California Independent System Operator, or any successor thereto.

"**CAISO EIM**" means the energy imbalance market operated by CAISO.

"**Change in Law**" means the occurrence, after the Execution Date, of any of the following: (a) the adoption or taking effect of any law, tax law, rule, regulation, order or treaty; (b) any repeal of or other change in any law, tax law, rule, regulation, order or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"**Change of Control**" means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller; provided, in calculating ownership percentages for all purposes of the foregoing:

(A) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity or voting interests in each such intermediate entity; and

(B) ownership interests in Seller owned directly or indirectly by any Lender (including any Tax Equity Investor) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, a Change of Control will not include any direct or indirect transfer of the interests in Seller to NEP; provided that following such transfer the entity that operates the Project is (or contracts with) a Qualified Operator.

"**Charging Energy**" means the amount of Energy supplied by Buyer at Buyer's cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured in MWh by the Electric Metering Devices, accounting for estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Commercial Operation**" means when the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the ESS Reliability Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental Approvals required for Seller to operate the Project in accordance with

Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this ESA; and (h) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

"**Commercial Operation Date**" means the date, determined in accordance with Section 3.10, on which all of the following have occurred: (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10; (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation Month**" means a Month occurring after the Commercial Operation Date.

"**Commercial Operation Notice**" has the meaning set forth in Section 3.10.

"**Commercial Operation Year**" means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

"**Commissioning Kickoff Meeting**" has the meaning set forth in Section 3.1 of Exhibit O.

"**Commissioning Test**" means the Initial ESS Unit Capabilities testing detailed in Exhibit F required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

"**Commissioning Readiness Review Meeting**" has the meaning set forth in Exhibit O.

"**Commissioning Tests**" has the meaning set forth in Section 10.2, as further defined in Exhibit F.

"**Confidential Information**" has the meaning set forth in Section 22.14(C).

"**Contract Value**" means the sum of the present values of the ESS Payments for each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination), which annual amount is equal to (a) the quantity of ESS Capacity expected to be made available during such Commercial Operation Year (or portion

thereof) *times* (b) the ESS Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Counteracting Savings Notice**" has the meaning set forth in Section 3.17(D).

"**Creditworthy**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Data Breach**" has the meaning set forth in Section 22.14(F).

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

"**Default Rate**" has the meaning set forth in Section 9.4.

"**Defaulting Party**" means the Party with respect to which an Event of Default under Article 12 has occurred.

"**Delay Damages**" has the meaning set forth in Section 3.7.

"**Delayed ESS Capacity**" has the meaning set forth in Section 3.7.

"**Delivery Term**" has the meaning set forth in Section 7.1.

"**Delivery Term Security**" has the meaning set forth in Section 19.1.

"**Development Security**" has the meaning set forth in Section 19.1.

"**Discharge Energy**" means Energy discharged from the ESS and delivered to Buyer at the Point of Delivery, as measured in MWh by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties.

"**Disclosing Party**" has the meaning set forth in Section 22.14(A).

"**Dispute Notice**" has the meaning set forth in Section 13.8.

"**Disputing Party**" has the meaning set forth in Section 9.5(A).

"**Dollars**" means the lawful currency of the United States of America.

"**Downgrade Event**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is not as

follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Early Termination Date**" has the meaning set forth in Section 12.4.

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission System as set forth in Appendix A of the Interconnection Agreement.

"**Electric Metering Device(s)**" means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharge Energy. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering, including the metering current transformers and the metering voltage transformers.

"**Eligible Change in Tariff**" means any change in Applicable Law, new interpretation of existing Applicable Law or action by a Governmental Authority that (a) imposes on Seller or Seller's Affiliates with respect to the importation of Imported Equipment into the United States any duty (including AD/CVD), tariff, import tax, or other similar import fee or cost that becomes effective after, or the enforcement of which commences after, the Threshold Date, or (b) increases the applicable rate of any of the foregoing which becomes effective after the Threshold Date, to the extent affecting Imported Equipment.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any Transmission Provider's Transmission System condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller's breach of its Interconnection Agreement with the Transmission Provider.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer's dispatch instructions and subject to the terms and conditions of this ESA.

"**Energy Storage System**" or "**ESS**" means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to receive, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's charging, discharging, delivery, or storage of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air

quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include (A) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States Environmental Protection Agency or other governmental agencies, (B) any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act, (C) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, (D) credits, benefits or allowances resulting from the compliance of the Project or Project Energy with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "**UNFCCC**") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes include all RECs, any and all aspects of a REC, and the exclusive right to claim the additionality, or "but for cause", of such Projects' development and commercial operation, (E) all WREGIS Certificates as defined by the WREGIS Operating Rules and (F) those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project's delivery or storage of electricity. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; (iii) any Energy, reliability, or other power attributes from the Project, (iv) matters designated by Buyer as sources of liability, and (v) any adverse wildlife or environmental impacts.

"**Environmental Contamination**" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

"**Equivalent Full Cycle**" means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial

charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

"**ESA**" means this Energy Storage Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"**ESS Capacity**" means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for four (4) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Payment Rate**" means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

"**ESS Capacity Shortfall Damages**" has the meaning set forth in Section 3.8.

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Non-Performance Liquidated Damages**" has the meaning set forth in Section 3.13.

"**ESS Operating Restrictions**" means the operating restrictions of the ESS set forth in Exhibit L.

"**ESS Response Delay**" has the meaning set forth in Exhibit F.

"**ESS Response Delay Damages**" has the meaning set forth in Section 3.13(B).

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the Primary Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Unit Capabilities**" has the meaning set forth in Section 3.12.

"**Event of Default**" means a Seller Event of Default as set forth in Section 12.1 or a Buyer Event of Default as set forth in Section 12.2, each after the passage of applicable notice and cure periods, if any.

"**Excused Delay**" means any of the following: (a) Force Majeure, (b) Interconnection Delay, or (c) an Import Restraint, as provided in Section 3.17, to the extent in each case (i) not caused by an act or omission of Seller, (ii) occurring despite Seller's exercise of Prudent Utility Practices, (iii) not reasonably foreseeable, and (iv) beyond the reasonable control of, and not caused by the negligence or lack of due diligence of, Seller or its contractors or suppliers.

"**Execution Date**" has the meaning set forth in the Preamble.

"**Expected Commercial Operation Date**" has the meaning set forth in Section 3.1.

"**Express Contingency Notice**" has the meaning set forth in Section 3.17.

"**Express Contingency Termination Payment**" means a termination amount equal to (i) one million dollars ($1,000,000) for a termination occurring pursuant to an Express Contingency Notice given on or before August 31, 2025 (regardless of when such termination occurs), or (ii) thirty-seven and one-half percent (37.5%) of the Development Security for a termination occurring pursuant to an Express Contingency Notice given at any other time.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**Fitch**" means Fitch Ratings Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

"**Force Majeure Event**" has the meaning set forth in Section 14.1.

"**Frequency Response Capability**" means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on the Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date.

"**GAAP**" has the meaning set forth in Section 22.18.

"**Government Official**" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

"**Governmental Approval**" means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this ESA or the procurement pursuant to this ESA of Product or any component thereof, and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission,

approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

"**Governmental Authority**" means any federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"**Governmental Charges**" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product, either directly or indirectly.

"**Gross Receipts Taxes**" means any New Mexico state and local sales taxes, gross receipts taxes and similar taxes and charges.

"**Guaranteed Charge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed Discharge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed ESS Capacity**" has the meaning set forth in Section 3.12 and shall be valid for the full duration of the ESA with no allowance for degradation.

"**Guaranteed ESS Roundtrip Efficiency**" has the meaning set forth in Section 3.12.

"**Guaranteed PMAX**" has the meaning set forth in Section 3.12.

"**Guaranteed Start Date**" has the meaning set forth in Section 3.1.

"**Guaranteed System Latency**" means the guaranteed time measured between when the control signal is received and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as specified in Section 3.12.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" means energy consumed by the ESS while the ESS is not charging or discharging, as well as energy consumed by ESS ancillaries not directly involved in the control, receipt, storage, or discharge of energy.

"**Imported Equipment**" means battery systems, batteries, inverters, step-up transformers, and structures (including towers and racking) intended to be imported into the United States from foreign destinations for the Project.

"**Import Restraint**" means any withhold release order or other law, rule, or regulation, including the Uyghur Forced Labor Prevention Act, or any action of a Governmental Authority under any such order, law, rule, or regulation, that imposes additional waiting time for Seller to receive Imported Equipment from foreign destinations, or prevents or delays the import or release of any Imported Equipment into the United States.

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended from time to time.

**"Interconnection Delay"** means the Transmission Provider's delay of the In-Service Date (as defined in the Interconnection Agreement) beyond the schedule set forth in the Interconnection Agreement in completing construction of the Interconnection Facilities or upgrades to the Transmission Provider's Transmission System related to, and required pursuant to the Interconnection Agreement for, the interconnection of the Project, but only to the extent that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, including Seller's failure to complete its obligations under the Interconnection Agreement as needed to ensure timely completion and operation of such Interconnection Facilities.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities, as defined and set forth in the Interconnection Agreement.

"**Internal Revenue Code**" means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

"**Issuer Minimum Requirements**" has the meaning set forth in Section 19.2.

"**ITC(s)**" means the investment tax credits established pursuant to Section 48 or Section 48E of the Internal Revenue Code, as such law may be amended or superseded (in whole or in part) from time to time, measured in Dollars.

"**kW**" means one or more kilowatts AC of electricity, as the context requires.

"**kWh**" means kilowatt hour AC.

"**Lender(s)**" means any and all Persons other than an Affiliate of Seller (a) lending money or extending credit (including any financing lease, monetization of Tax Benefits, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or to an Affiliate

of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing (including tax equity bridge financing), credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) for any capital improvement or replacement related to the Project; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

"**Letter of Credit**" means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

"**Licensed Professional Engineer**" means an independent, professional engineer that is reasonably acceptable to Buyer, licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

"**Local Provider**" has the meaning set forth in Section 1.4.

"**Losses**" has the meaning set forth in Section 20.1(A).

"**Market Event**" has the meaning set forth in Section 7.4(B).

"**Market Operator**" means (a) CAISO in its capacity as operator of EIM, (b) the operator of the BAA or any other entity performing the market operator function for the BAA, or (c) the operator of any organized day-ahead or intra-hour market for a region that includes the Transmission Provider's Transmission System.

"**Maximum State of Charge**" means the relative SOC above which the battery manufacturer recommends that the BESS system not be charged, expressed in percent of Nameplate Energy Capacity.

"**Minimum State of Charge**" means the relative SOC below which the battery manufacturer recommends that the ESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

"**Month**" means a calendar month.

"**Monthly Billing Period**" means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.8.

"**Moody's**" means Moody's Investor Services, Inc. and any successor thereto.

"**Mountain Standard Time**" or "**MST**" means the time that is seven (7) hours behind Coordinated Universal Time (UTC).

"**MPT Failure**" means any failure in the Project's main power transformer or high voltage breakers (a) requiring (x) at least a thirty (30) day outage, and (y) any of (i) replacement of the main power transformer or high voltage breakers, (ii) shipment of the main power transformer or major component thereof, or high voltage breakers or major component thereof, to the manufacturer for repair, or (iii) the on-site repair of the main power transformer or major component thereof, or high voltage breakers or major component thereof, and (b) that is not caused directly or indirectly by Seller's failure to comply with Prudent Utility Practices or Applicable Law or otherwise by the dalliance, delay, lack of prudently maintained spare parts, fault or negligence of or by Seller.

"**Munitions List**" means any list of articles, services or technology designated as defense or military articles, technologies, software or services by any relevant Government Authority, including items listed on the United States Munitions List and/or the Common Military List of the European Union.

"**MW**" means megawatt or one thousand (1,000) kW AC.

"**MWh**" means megawatt hours AC.

"**Nameplate Energy Capacity**" is the maximum amount of energy in MWh, less auxiliary loads, that the ESS can store at 100% state of charge.

"**NEE**" means NextEra Energy, Inc., a Delaware corporation.

"**NEECH**" means NextEra Energy Capital Holdings, Inc., a Delaware corporation.

"**NEER**" means NextEra Energy Resources, LLC, a Delaware limited liability company.

"**NEOP**" means XPLR Infrastructure Operating Partners, LP (f/k/a NextEra Energy Operating Partners, LP), a Delaware limited partnership.

"**NEP**" means XPLR Infrastructure, LP (f/k/a NextEra Energy Partners, LP), a Delaware limited partnership.

"**NERC**" means the North American Electric Reliability Corporation or any successor organization.

"**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in Section 17.3(B).

"**Non-Defaulting Party**" means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

"**Non-Governmental Compliance Obligations**" means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, and self-

regulatory organizations to which the Party is required to have membership and/or submit to jurisdiction in the performance of this ESA.

"**O&M Records**" has the meaning set forth in Section 13.4(A).

"**OATT**" means Open Access Transmission Tariff.

"**Operating Parameters**" has the meaning set forth in Section 10.4(A).

"**Operating Procedures**" means those procedures developed pursuant to Section 10.5.

"**Operating Records**" means all operating logs, blueprints for construction, operating manuals, all warranties on equipment, material engineering drawings, environmental permits, plans, and all documents, including but not limited to supply contracts, studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project. Seller may redact from Operating Records information that Seller reasonably deems commercially sensitive, so long as such redaction does not result in a non-performance by Seller of any of its obligations under this ESA, including audits under Section 22.18 or required to verify Seller's compliance with this ESA and its representations and warranties in Section 15.1, Guaranteed ESS Availability Percentage, and billing and payments.

"**Outage Notice**" has the meaning set forth in Section 7.5(A).

"**Party**" or "**Parties**" has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

"**Person**" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**Point of Contact List**" or "**POC List**" has the meaning set forth in Section 2 of Exhibit O.

"**Point of Delivery**" means, unless otherwise modified in accordance with Section 3.11, the electric system point at which (a) Buyer delivers Charging Energy to Seller, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA.

"**Primary Metering Device(s)**" means the Electric Metering Device used as the primary basis to measure, record, or transmit data relating to the Charging Energy or Discharge Energy associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

"**Product**" means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities from the Project, all of which shall be made available and delivered for Buyer's exclusive use pursuant to the terms of this ESA.

"**Project**" means Seller's energy storage facility, located in Valencia County, New Mexico, with a designed maximum power discharge capability of 100 MW for four (4) hours (400 MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller's equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

"**Project Manager**" has the meaning set forth in Section 10.1(D).

"**Project Schedule**" has the meaning set forth in Section 3.2.

"**Promotional Materials**" has the meaning set forth in Section 22.15.

"**Prudent Utility Practice(s)**" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the battery energy storage industry, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available when needed and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection

requirements, operating requirements of the Interconnection Agreement, voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for battery energy storage systems of the technology provided in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"**Rating Agency**" shall mean S&P or, Moody's or Fitch.

"**Receiving Party**" has the meaning set forth in Section 22.14(A).

"**Receiving Party's Representatives**" has the meaning set forth in Section 22.14(B).

"**Recording**" has the meaning set forth in Section 22.19.

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator, as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Replacement ESS Costs**" means the actual costs incurred by Buyer following an Event of Default that are reasonable and necessary to replace the Product (based upon similar terms, conditions and performance standards outlined in this ESA) which Seller, in accordance with this ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable Product made available and delivered to Buyer's system, as reasonably determined by Buyer or a third party reasonably selected by Buyer. In calculating such amounts, Buyer will follow Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this ESA.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**Retail Customer**" has the meaning set forth in the Recitals.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community, or His Majesty's Treasury.

"**Scheduled Maintenance Outage**" means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this ESA, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" or "**SCC**" has the meaning set forth in Section 3.9.

"**Scope Reporting Rule**" means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 C.F.R. § 229.1500, et seq., as amended from time to time, and, to the extent Buyer or Retail Customer voluntarily elects in its sole discretion to comply therewith, as proposed, or, following the effectiveness thereof, in the final rule form thereof despite being stayed or vacated by appealable judicial action and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Subscriber voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

"**SEC**" has the meaning set forth in Section 22.18.

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Section 45(b) Rate Adjustment**" means any Change in Law that repeals, in whole or in part, the Inflation Reduction Act of 2022, or changes any regulations or administrative guidance implementing the Inflation Reduction Act, in a manner that prevents or limits Seller from claiming or monetizing any ITC.

"**Security**" means Development Security or Delivery Term Security, as applicable.

"**Seller**" has the meaning set forth in the Preamble.

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product as a result of (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, (c) any failure by Buyer to perform a material obligation under this ESA (other than due to a breach by

Seller of its obligations under this ESA), (d) failure of Buyer to have provided sufficient Charging Energy for such discharge, (e) an Emergency Condition, or (f) Buyer's dispatch of the Project which is not in accordance with the Operating Parameters.

"**Seller Forced Outage**" means an unplanned reduction, interruption, or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery and not associated with Seller Excused Hours.

"**Seller Guarantor**" means (i) NEECH, or (ii) a Creditworthy entity that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Parties**" means the following persons or entities connected to the Seller providing services in connection with this Agreement: Affiliates, all entities that it owns or controls, and all of Seller's owners (including Seller's Parent Entity), directors, officers, employees, representatives, and agents.

"**Seller Permitted Transfer**" means:

(1) during periods when NEER or its Affiliate is the direct or indirect owner of more than fifty percent (50%) of the direct or indirect equity and voting interests of Seller (which are not otherwise held by Tax Equity Investors in connection with a Tax Equity Financing), any of the following: (a) a Change of Control of Seller's Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor in connection with a Tax Equity Financing; or (c) a transfer of (i) all or substantially all of the assets of NEER or Seller's Ultimate Parent in a single transaction, (ii) all or substantially all of Seller's Ultimate Parent's renewable energy storage portfolio in a single transaction, or (iii) all or substantially all of NEER's or Seller's Ultimate Parent's energy storage portfolio in a single transaction; provided that following such transfer (A) the entity operating the Project is (or contracts with) a Qualified Operator to operate the Project; (B) such transfer does not have a material adverse effect on the Seller's credit characteristics; and (C) the transferee maintains the applicable Seller Security in accordance with Article 19, and

(2) during periods when NEER or its Affiliate is not the direct or indirect owner of more than fifty percent (50%) of the direct or indirect equity or voting interests of Seller (which are not otherwise held by Tax Equity Investors in connection with a Tax Equity Financing) any of the following: (a) a Change of Control of Seller's Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor in connection with a Tax Equity Financing; or (c) a transfer of all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction; provided, that in the case of each of (b) or (c), following such transfer (A) the entity that operates the Project is (or contracts with) a Qualified Operator, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics, and Seller, or such Person, maintains the applicable Seller Security requirements in accordance with Article 19.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be

applicable in the market under a replacement contract covering the same products (i.e., Product) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; *provided* that if (a)(i) is less than (a)(ii), then zero, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary, indirect, or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or in entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this ESA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this ESA.

"**Serial Defect**" means a defect occurring in ten percent (10%) or more of the same parts or components of the Project, that is not attributable to normal wear and tear or reasonably expected lifecycle degradation.

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. This ESA is Site specific and any relocation of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. Adding or subtracting contiguous parcels of property will not be deemed a relocation requiring Buyer consent.

"**Special Service Contract**" has the meaning set forth in the Recitals.

"**State of Charge**" or "**SOC**" means the level of charge as reported by the ESS relative to the Maximum State of Charge.

"**Supplemental Tax Incentive**" means any federal, state, or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any. Supplemental Tax Incentives do not and shall not include any benefits available under the Inflation Reduction Act of 2022 or any regulations promulgated thereunder, which, for the avoidance of doubt, are included in the ESS Payment Rate.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of the ESS.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits, Supplemental Tax Incentives, and any other tax credits that are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses, or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

"**Technical Expert**" means, (i) with respect to an Import Restraint, an independent third-party validation firm that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, or (4) Clean Energy Associates; or (B) mutually agreed upon by both Parties; (ii) with respect to a Counteracting Savings Notice or Express Contingency Notice, an independent third-party validation firm that is: (A) selected by Buyer if a Counteracting Savings Notice, or Seller if a Express Contingency Notice from among (1) Pricewaterhouse Coopers, (2) KPMG, or (3) Ernst & Young; or (B) mutually agreed upon by both Parties.

"**Term**" means the period during which this ESA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and is available to receive

Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

"**Threshold Date**" means (i) for an Eligible Change in Tariff, March 31, 2025, and (ii) for a Section 45(b) Rate Adjustment, the Execution Date.

"**Transmission Provider**" means Public Service Company of New Mexico, Inc., a New Mexico corporation, acting in its transmission function capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means (i) NEE, or, (ii) after any transfer of the direct or indirect equity interests in Seller to NEP, NEE or NEP.

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"**WREGIS**" means the Western Renewable Energy Generation Information System or successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this ESA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this ESA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this ESA, the terms of this ESA shall take precedence.

(D) This ESA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this ESA,

and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this ESA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this ESA. Unless expressly provided otherwise in this ESA, (i) where the ESA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the ESA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this Agreement as a whole.

(H) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(I) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or".

(J) Headings and Section titles are solely for convenience and should not be used to aid in the construction of this Agreement.

(K) All uses of the word "shall" in this ESA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party shall conduct its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this ESA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this ESA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as

purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

(D) Notwithstanding the foregoing, nothing in this ESA shall be construed to limit Seller's rights, claims, causes of action or similar legal abilities against the Transmission Provider, BAA or Market Operator for actions those parties may take from time to time, nor shall this ESA be construed to limit the liability of the Transmission Provider, BAA or Market Operator with respect to Seller.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of House Energy, backfeed power or station service power. Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power separate, bi-directional or consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be able to be financially separated from the metering of Charging and Discharging of the ESS in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this ESA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) House Energy, backfeed power and station service power shall be real time measured by a dedicated electric metering device and shall not be delivered by Seller to Buyer under this ESA.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This ESA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. MST on the date that is the last Day of the twentieth (20th) Commercial Operation Year ("**Term**"), subject to the early termination provisions set forth herein. Applicable provisions of this ESA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The Term shall be unaffected by termination of the Special Services Contract.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms, and as more fully set forth in this ESA, apply to the transaction contemplated by this ESA:

**COMMERCIAL TERMS**

<table>
<tr><td>Buyer: Public Service Company of New Mexico</td><td>Seller: Star Light Energy Center, LLC</td></tr>
<tr><td colspan="2">Project: Star Light Energy Storage</td></tr>
<tr><td colspan="2">Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of "Point of Delivery."</td></tr>
<tr><td>Contract Term: Twenty (20) Commercial Operation Years</td><td>Product Type: Discharge Energy, Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services</td></tr>
<tr><td colspan="2">ESS Payment Rate: $19.32 per MWh</td></tr>
<tr><td>Day(s) of week: Monday through Sunday, including NERC holidays</td><td>Hours: Hour Ending 0100 MST – Hour Ending 2400 MST, Monday through Sunday</td></tr>
<tr><td colspan="2">Guaranteed Start Date: One Hundred Eighty (180) Days after the Expected Commercial Operation Date</td></tr>
<tr><td colspan="2">Expected Commercial Operation Date: December 1, 2026, subject to extension as set forth in Section 3.6.</td></tr>
</table>

3.2 Project. Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point and the location of the Interconnection Facilities is included in Exhibit A to this ESA. Exhibit A also contains a preliminary indication of the location of the ESS and Solar Facility at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS, Interconnection Facilities, and Solar Facility at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the Interconnection Agreement, and the terms of this ESA. The Project shall meet or exceed the performance specifications of Section 3.4(A) thru Section 3.4(H), and Seller shall ensure that the Project meets or exceeds the standards defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N - Example Interconnection Metering Diagram from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Discharge Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) receive Charging Energy from Buyer and deliver Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of operation over an ambient temperature range of -20$^{o}$F to 110$^{o}$F with relative humidity between 5% and 100%, inclusive;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of disconnection remotely by the System Control Center;

(I) meet or exceed the recommended performance specifications of this Section 3.4.I thru 3.4.K, and as appropriately defined in IEEE Standard 2800-2022 Sections 5, Section 6 and Section 7 at the Point of Delivery, at all times;

(J) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Sections 5 at the Point of Delivery;

(K) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Section 7 at the Point of Delivery, which shall be Category II minimum;

(L) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6 at the Point of Delivery; and

(M) no later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Sections 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as set forth in this ESA, the Commercial Operation Date shall occur no later than the Guaranteed Start Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis, up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Excused Delay that delays construction or commencement of operation of the Project. Seller shall give written notice to Buyer describing any such Excused Delay within five (5) Business Days after becoming aware of its effect on Seller's performance under this ESA. This notice shall provide such detail concerning the Excused Delay as Seller reasonably possesses at the time. The number of Days of such extension shall be calculated from the date on which the Excused Delay begins. If cumulative extensions for Excused Delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this ESA without liability of either Party other than obligations already incurred; *provided*, however, that if cumulative extensions for Excused Delay have delayed the Commercial Operation Date for three hundred sixty-five (365) Days and Buyer has not terminated the ESA, then Seller will have the right to terminate this ESA without liability of either Party other than obligations already incurred. If the Expected Commercial Operation Date has been extended more than one hundred (100) Days due to an Import Restraint, and either Party terminates the ESA in accordance with the foregoing sentence, Seller shall pay to Buyer the Express Contingency Termination Payment, and Buyer shall retain any unpaid Express Contingency Termination Payment from the Development Security.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed ESS Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed ESS Capacity**" is an amount equal to the difference between the Guaranteed ESS Capacity and the Installed ESS Capacity as of the determination date. If the Commercial Operation Date has not occurred before the earlier of (i) the Guaranteed Start Date or (ii) the date on which the accrued Delay Damages equal the Development Security, then Seller shall thereafter have the right for thirty (30) days to terminate this ESA immediately by providing written notice thereof to Buyer, and, other than Seller's payment of the accrued Delay Damages in the amount of the Development Security, no Buyer Termination Payment shall be due.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned, and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date (as such date may be extended by the extension of the Expected Commercial Operation Date pursuant to Section 3.6), then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars ($350,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Period. Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generation Operator and will designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M, forty-five (45) Days prior to the beginning of the Test Period. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver (net of losses due to ESS Roundtrip Efficiency) such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharging Energy. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to the commencement of such Test Period. Scheduling for subsequent deliveries of Discharge Energy shall be as set forth in Section 5.1.

3.10 Notice of Commercial Operation. Not less than thirty (30) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such anticipated Commercial Operation Date; provided that such anticipated Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied (the "**Commercial Operation Notice**"). Buyer shall, within fifteen (15) Business Days, in writing either accept Seller's Commercial Operation Notice or reject it based on specifically-identified deficiencies in the criteria in the definition of Commercial Operation Date, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent Commercial Operation Notice is submitted to Buyer. If Buyer rejects the Commercial Operation Notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Charging. The ESS shall be configured to charge using Energy provided by the Buyer from either the electrical grid or the Solar Facility. Seller shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid by the Commercial Operation Date.

3.12 ESS Unit Capabilities. "ESS Unit Capabilities" means all of the following for the ESS, all as measured and determined at the Point of Delivery:

(A) "**Guaranteed PMAX**" of 100 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) "**Guaranteed ESS Capacity**": discharge ESS at Guaranteed PMAX for four (4) consecutive hours; starting at the Maximum State of Charge and ending at the Minimum State of Charge;

(C) **Guaranteed ESS Roundtrip Efficiency** as shown in Exhibit K; Seller shall provide any applicable degradation forecasts applicable to this guarantee;

(D) **Guaranteed Discharge Ramp Rate** of 25 MW per second, measured between 90% State of Charge and 10% State of Charge, representing the maximum rate that the ESS can change its output power;

(E) **Guaranteed Charge Ramp Rate** of 25 MW per second, measured between 10% State of Charge to 90% State of Charge, representing the maximum rate that the ESS can change its input power;

(F) Guaranteed System Latency: <1 second

(G) Guaranteed Frequency Response Capability of Guaranteed PMAX/0.1Hz; and

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5(D). Seller will pay Buyer the following liquidated damages ("**ESS Non-Performance Liquidated Damages**") as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, (b) failure of Buyer to deliver Charging Energy, or (c) a Scheduled Maintenance Outage) or to comply with the requirements of Section 7.4(a).

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Forty Thousand Dollars ($140,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured; and

(B) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, Guaranteed Frequency Response Capability, or Guaranteed System Latency during ESS Unit Capabilities Testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. Provided, however, under no circumstances will ESS Non-Performance Liquidated Damages (other than ESS Response Shortfall Damages) exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year and an aggregate of Two Million Dollars ($2,000,000) over the Term of this ESA.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay Availability Damages as defined in Exhibit H, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

3.15 Guaranteed ESS Roundtrip Efficiency Payment. If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to $100/MWh, *multiplied by* Guaranteed PMAX, *multiplied by* 4 hours *, *multiplied by* (1 - ESS Roundtrip Efficiency/Guaranteed ESS Roundtrip Efficiency)). Seller shall pay such amount following the end of the applicable Commercial Operation Year.

3.16 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof utilized in the Project under this ESA is not prohibited by Applicable Law. Any breach of this Section 3.16 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.16 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.17 Eligible Change in Tariff; Import Restraint

(A) Seller acknowledges that this Section 3.17 is intended for sole use in connection with Retail Customer service under Schedule 36-B and is not precedential for any other contract or agreement with PNM, with Seller or with any other Person. To the extent either (X) one or more Eligible Change in Tariffs or a Section 45(b) Rate Adjustment occur between the Threshold Date and the Adjustment Cutoff Date that Seller is able to document will increase Seller's costs reasonably anticipated over the Term to perform this ESA, or reduce the value (including any limitation on Seller's ability to transfer or otherwise monetize) of any tax credits available under Section 48 or Section 48E of the Internal Revenue Code and/or quantity thereof that Seller reasonably anticipated receiving, by an amount that is equal to at least one and one half percent (1.5%) of either the costs for Seller to build the Facility or the value of the Section 48 or Section 48E tax credits, as applicable, Seller anticipated on the Threshold Date, or (Y) one or more Import Restraints occur between the Execution Date and the Adjustment Cutoff Date that will delay the Expected Commercial Operation Date, Seller may prior to thirty (30) Days after each such Eligible Change in Tariff, Section 45(b) Rate Adjustment, or Import Restraint provide written notice to Buyer of an increase to the ESS Payment Rate to keep Seller whole with respect to the cost increases in the case of an Eligible Change in Tariff or Section 45(b) Rate Adjustment, or delays that Seller reasonably anticipates in the case of an Import Restraint, including replacement supply arrangements and the required extension of the Expected Commercial Operation Date, Guaranteed Start Date, and all other Milestones (in each case, an "**Express Contingency Notice**").

(B) If Buyer disagrees with any aspect of an Express Contingency Notice, Seller shall at its expense retain the Technical Expert. Within fifteen (15) Business Days of Buyer's receipt of the Express Contingency Notice, Buyer and Retail Customer may submit a report to the Technical Expert setting forth questions, countervailing considerations, and other relevant matter, and thereafter the Technical Expert will generate a report respecting the matters set forth in the

Express Contingency Notice, including whether it agrees with the cost increases in the case of an Eligible Change in Tariff or a Section 45(b) Rate Adjustment or schedule changes in the case of an Import Restraint, evidencing the facts alleged by Seller. Such report shall preserve the confidentiality of the information provided by the Parties. Buyer shall have the Report Review Period to review the report from the Technical Expert. Seller shall bear the expenses of the Technical Expert. The Technical Expert's final written determinations shall be binding on the Parties and not subject to dispute.

(C) The ESA shall be automatically amended on the first day following the Report Review Period to incorporate any increase to the ESS Payment Rate or extension to the Expected Commercial Operation Date, Guaranteed Start Date, or other Milestones as set forth in the Express Contingency Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable, except that unless Buyer agrees otherwise in writing: (1) any increase to the ESS Payment Rate pursuant to Section 3.17(A)(X) shall not exceed $3/MWh, and (2) any extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other Milestone pursuant to Section 3.17(A)(Y) shall not exceed one hundred and eighty (180) days; and provided further, that if Seller's Express Contingency Notice sets forth for implementation an increase to the ESS Payment Rate that exceeds the increase limitation in clause (1) or extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other Milestone that exceeds the extension limitations in clauses (2) above, and Buyer does not accept such excess increase or extension in writing, Seller shall have the right to terminate this ESA and pay to Buyer the Express Contingency Termination Payment, but without further liability of either Buyer or Seller for such termination, upon notice to Buyer, unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security less any unpaid Express Contingency Termination Payment to Seller within fifteen (15) days after such termination.

(D) Counteracting Savings Price Adjustment. If a Change in Law occurs, after the Threshold Date and before the first anniversary of the last adjustment to price or schedule following an Express Contingency Notice that creates savings for Seller, economic benefits for Seller, decreases costs of performance or offsets prior increases in costs to performance set forth in a previous Express Contingency Notice, Buyer may, within ninety (90) days after such Change in Law, provide written notice to Seller of a decrease to the ESS Payment Rate (a "**Counteracting Savings Notice**"). The Parties shall use the process provided in Section 3.17(B) as if the Counteracting Savings Notice was an Express Contingency Notice for an Eligible Change in Tariff, but providing for a reduction in the ESS Payment Rate and for Buyer to at its expense retain the Technical Expert, and Seller will have the Report Review Period to review the report of the Technical Expert. The ESA shall be automatically amended on the first day following the Report Review Period to incorporate any decrease to the ESS Payment Rate as set forth in the Counteracting Savings Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable; provided that, unless Seller agrees otherwise in writing, any decrease to the ESS Payment Rate under this Section 3.17(D) shall not exceed the cumulative previous increases to the ESS Payment Rate pursuant to all prior Seller Express Contingency Notices.

ARTICLE 4
AGC

4.1 AGC.

(A) Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability within the Operating Parameters. Total cycles shall not exceed three hundred sixty-five (365) Equivalent Full Cycles in any Commercial Operation Year. Notwithstanding anything in this ESA to the contrary, Seller will have no obligation to dispatch the ESS in response to any dispatch instructions provided by PNM that are not in accordance with the Operating Parameters, and the time period during which non-conforming instructions are given will be considered Seller Excused Hours.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this ESA. Seller shall secure transmission and interconnection service necessary (i) to deliver the Discharge Energy to the Point of Delivery, and (ii) receive Charging Energy from the grid at the Point of Delivery to the ESS, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the Solar Facility, provided that (i) delivery of Energy from the Solar Facility to the Transmission Provider's Transmission System shall take priority over Discharge Energy and the reservation of Ancillary Services capacity at the Point of Delivery; and that, (ii) when Buyer dispatches the ESS for the provision of Ancillary Services in

response to an Emergency Condition, Discharge Energy shall take priority over delivery of Energy from the Solar Facility.

(B) Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy at the Point of Delivery for the Project at the required voltage, including the costs of any associated network upgrades. As between Buyer and Seller under this ESA, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges required to deliver Discharge Energy from and beyond the Point of Delivery. As between Buyer and Seller under this ESA, Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) to deliver Charging Energy to the Point of Delivery, including for the avoidance of doubt during the Test Period.

(E) Seller shall provide to Buyer a finalized one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to provide this information to Buyer in a timely manner.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 a.m. MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers ("**CTs**") and potential transformers ("**PTs**") ("**Back-Up Metering**"), each in an arrangement consistent with the configuration depicted in Exhibit N, or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement conflicts with these provisions, in which case the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this ESA.

The design of the Electric Metering Device system shall be subject to Buyer approval, not to be unreasonably withheld, prior to commencement of construction of the Project. Buyer will, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe following such test. ESS Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous, five minute, fifteen minute, and hourly real and reactive Energy and capacity, if supplied by either the grid, the Solar Facility, or the Project. ESS Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.2 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party shall, at its own expense, inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided*, *however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided*, *however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Secondary Metering, fails to register, or if the measurement made by an Electric Metering Device, or Secondary Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, followed by Secondary Metering to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

## ARTICLE 6
## Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this ESA are subject to satisfaction of the following condition precedent:

(A) As provided in Section 17.3, receipt of NMPRC Approval.

6.2 Notice. As soon as reasonably practicable after satisfaction of the condition precedent specified in Section 6.1 or after confirmation that NMPRC Approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

ARTICLE 7
Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell, make available and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Party's performance is excused by a Force Majeure Event; (b) a Seller Forced Outage is continuing; (c) a Seller Scheduled Maintenance Outage is continuing, or (d) Seller fails to perform and its failure is excused during Seller Excused Hours. At its sole discretion and cost, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will, at its sole cost, have exclusive rights to offer, bid, or otherwise submit the Product for resale in the market and retain and receive any and all related revenues. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this ESA. During the Term, Buyer shall assume all duties as the scheduling coordinator (or equivalent) in any market in which the Project participates or in which the Product is submitted (including the Western Energy Imbalance Market (EIM)), and Buyer shall be responsible for all costs, fees and charges associated with such participation, except for fees or penalties resulting from Seller's breach of this ESA.

7.2 Title and Risk of Loss. Buyer shall be deemed to be in control of all Charging Energy up to delivery, but not including, receipt at the Point of Delivery. Seller shall be deemed to be in control of such Charging Energy from and after such delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy up to the Point of Delivery. Buyer shall be in control of such Discharge Energy from and after Seller's delivery and upon Buyer's receipt at the Point of Delivery. Buyer shall retain title and risk of loss for Charging Energy, Energy stored in the ESS, and Discharge Energy at all times. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery, unless otherwise provided in Section 11.1.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such Future Environmental Attributes is included in the ESS Payment Rate; and (c) such Future Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this ESA. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, or if any change in Applicable Law relating to such Future Environmental Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this ESA in order to deliver the Future Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify

Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. Buyer shall be liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) During the Delivery Term, Buyer shall arrange all scheduling services necessary to receive Discharge Energy from, and deliver Charging Energy to, the Point of Delivery while ensuring compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and/or Force Majeure Events.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point, or Buyer no longer reside in the same market ((i) and (ii) a "**Market Event**") and such Market Event materially changes the interconnection and delivery requirements in this ESA or has a material adverse effect on either Party, the Parties shall negotiate in good faith amendments to this Agreement to facilitate the delivery of Product from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this ESA to the extent possible.

(C) Seller shall provide to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly ESS availability for the next six (6) Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer by 1MW or more, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage in the amount of at least five percent (5%) of the Guaranteed ESS Capacity. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage (i) in the amount of at least five percent (5%) of the Guaranteed ESS Capacity, and (ii) not available to Buyer through the SCADA System. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Discharge Energy, if any, that would be available for delivery at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

## ARTICLE 8
## Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Payment. Subject to the provisions of this ESA, Buyer shall pay Seller an amount equal to the product of (i) ESS Capacity, not to exceed the Guaranteed ESS Capacity, *multiplied by* (ii) the ESS Payment Rate, *multiplied by* (iii) the ESS Available Hours (the "**ESS Payment**"). The ESS Payment also compensates Seller for the associated Future Environmental Attributes and Ancillary Services delivered to Buyer. The ESS Payment includes all Taxes except as provided for in Section 9.7, Section 20.1(B) and Section 21.1.

Example: For a 30-day month, assuming 98% availability:

*ESS Payment = [] MW x 30 days x 24 hours x $[]/MWh x .98*

(B) If Supplemental Tax Incentives become available in connection with the Product, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this ESA. At Buyer's option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this ESA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such incentives.

(C) If Seller or an Affiliate of Seller realizes any Supplemental Tax Incentives with respect to the Project, the value of such Supplemental Tax Incentives actually realized will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental Tax Incentives by Seller or Affiliate of Seller, Seller will remit to Buyer a payment equal to fifty percent (50%) of the value of such Supplemental Tax Incentives.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this ESA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this ESA.

## ARTICLE 9
## Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 3.17. From and after the Commercial Operation Date, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show the ESS Payment, information and calculations, in reasonable detail.

(D) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(F) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this ESA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this ESA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this ESA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all Gross Receipts Taxes charged to Buyer, provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with Applicable Law governing the reporting and payment of Gross Receipts Taxes on those transactions. Buyer shall

reimburse Seller for Gross Receipts Taxes, if any, imposed on Seller's sale of and Buyer's purchase of Product and on Buyer's payment and Seller's receipt of amounts due under this ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this ESA.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees, assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this ESA and implement the provisions in this ESA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, copies of any documentation respecting this ESA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this ESA, including Section 9.9 below, all payments between the Parties under this ESA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this ESA, including damages and other payments that are owed by a Party to the other Party pursuant to this ESA. Undisputed and non-offset portions of

amounts invoiced under this ESA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this ESA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this ESA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 10
## Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement and this ESA. Seller will be solely responsible for obtaining Tax Benefits, and except as provided in Section 3.17, the ESS Payment Rate will not be adjusted to accommodate increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule in Microsoft Project format within thirty (30) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-23-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15$^{th}$ of each month. For cases where the 15$^{th}$ falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by Section 62-23-16 of the New Mexico Public Utility Act. If Seller becomes aware of any critical milestone that will not be achieved by the required date, no later than ten (10) Business Days following the originally scheduled date, Seller must provide Buyer written notice and a recovery plan to achieve such milestone and to minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii)

the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date), a Project Manager reasonably acceptable to Buyer (such acceptance not to be unreasonably withheld, conditioned, or delayed) who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this ESA and any documents ancillary hereto, neither this ESA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith, including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this ESA with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated

with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Such Commissioning Test procedures shall meet or exceed the operability performance requirements defined in IEEE Standard 2800-2022 Sections 4. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least thirty (30) Days' prior notice of the approximate test date and ten (10) Days' prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with twenty-four (24) hours advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements, including executing customary waiver and indemnity agreements, and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this ESA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this ESA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA; and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five minute and real time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees

to operate the Project in such a manner that Discharge Energy delivered by Seller will meet operability performance requirements defined in IEEE Standard 2800-2022, Sections 5 through 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all real time measurement parameters of the Project including individual inverter and system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Sections 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers requirements and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with a ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures.

(A) Seller shall provide Buyer a draft of all Operating Procedures and collaborate with Buyer to finalize mutually agreeable, written Operating Procedures within the timeline defined in Table 2 of Exhibit O. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must operate, maintain and control the Project at all times consistent with the Operating Procedures, the ESA, Prudent Utility Practices, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, and must be continuously available by phone. Seller will make qualified personnel

available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

(B) Seller will prepare detailed test protocols and procedures for all of the Commissioning Tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be unreasonably denied or delayed.

(C) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and provide the results to Buyer. Seller will have sixty (60) Days from the test date to cure any deficiencies in the test.

(D) In the event of a material adverse change in ESS Unit Capabilities, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the following conditions. Buyer-Requested Performance Tests will be conducted in a manner consistent with the annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F.

(1) If the results of a Buyer-Requested Performance Test fail to meet the Guaranteed ESS Unit Capabilities, ESS Non-Performance Liquidated Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(2) Only two (2) Buyer-Requested Performance Tests may be requested per Commercial Operation Year.

(3) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

(E) In addition to the foregoing, Seller may, at its option and expense, perform additional tests ("**Seller-Requested Performance Tests**") in accordance with test protocols and procedures set forth in Exhibit F.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following Commercial Operation Year. Should Buyer desire to change the reporting dates noted above as a result of Buyer's participation in a regional market or program (including the Western Resource Adequacy

Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a non-binding notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each Scheduled Maintenance Outage for the Commercial Operation Year will be subject to reasonable approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Upon the written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Except as allowed under Section 12.1(A)(4), as of the start of the Test Period, Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

ARTICLE 11
Environmental Attributes

11.1 Sale of Environmental Attributes.

(A) Effective from the date on which Seller first makes Product available, to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer no later than fifteen (15) Business Days after the Future Environmental Attributes are available to be transferred in the respective attribute tracking system. Buyer may request that Seller provide Buyer with a reasonable estimate of the incremental costs, if any, that Seller would incur to deliver to Buyer Future Environmental Attributes pursuant to WREGIS or another tracking system or registry, as requested by Buyer. Seller shall provide such reasonable cost estimate to Buyer within thirty (30) days of receipt of Buyer's request. Following Buyer's receipt of Seller's cost estimate, Buyer may thereafter require Seller deliver such Future Environmental Attributes, and Seller shall do so, at Buyer's expense; provided, however, that Buyer may further thereafter request Seller to cease delivery of some or all of such Future Environmental Attributes, and after the effective date of such request, Seller shall cease delivering as requested by Buyer.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes shall include any Future Environmental Attributes that are reserved or "banked" throughout the Term of this ESA, but not used, sold, assigned, or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law. Buyer shall have the exclusive right to transfer Environmental Attributes to Retail Customer, or retain the Environmental Attributes and retire the Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(D) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(E) Seller shall not report in any public communication, or under any program, that any of the Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer or retail Customer. During the Term, Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Environmental Attributes for Buyer to own, hold and manage in Buyer's or Retail Customer's own name and account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Environmental

Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Environmental Attributes, RECs, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy, and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. Seller shall have no duty to search for third-party claims but will have the duty to inquire and investigate as appropriate to support resolution of third-party claims which it has made, or of which it has become aware or have been reported to it by Buyer. To the extent that any such public communication is allowed under Section 13.1, in any public communication concerning the Project, Project Energy or the Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Charging Energy or Discharge Energy, *provided* that no portion of the foregoing is an agreement to affect Seller's ownership of or entitlement to Tax Benefits.

## ARTICLE 12
## Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller enters into an assignment for the benefit of creditors;

(3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller's voluntarily taking advantage of any such law by answer or otherwise;

(4) Except during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date or other date mutually agreed to by the Parties, except as may be extended pursuant to Section 3.6; or

(7) Seller's failure to deliver Environmental Attributes, to the extent deliverable, in accordance with the terms of this ESA on more than three occasions in any rolling thirty-six consecutive month period.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The Delivery Term Security has been fully drawn by Buyer and Seller has not replenished within ten (10) Business Days of written notice of full draw, whether or not Seller is obligated to replenish the Delivery Term Security pursuant to Section 19.1;

(3) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(4) The failure of any Seller Guarantor to be NEECH or Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) After the Commercial Operation Date, (x) the Project fails to achieve ninety percent (90%) of the Guaranteed ESS Capacity during annual performance testing conducted pursuant to Section 10.5(C), provided, that in no case shall such test be performed when major equipment is not operational; and (y) Seller fails to restore ESS Capacity to above ninety percent (90%) of the Guaranteed ESS Capacity referenced in Section 3.12 within one hundred eighty (180) days of such failure;

(6) Seller's failure to make any payment due to Buyer under or in connection with this ESA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this ESA), unless remedied within ten (10) Days of receipt by Seller of written notice of such failure from Buyer;

(7) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice; or

(8) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider, Buyer, or Retail Customer, or from a Force Majeure Event, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including, but not limited to, the Interconnection Agreement) required to make Product available at the Point of Delivery; or

(3) Seller's failure to comply with any other material obligation under this ESA, which would result in a material adverse impact on Buyer; or

(4) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty-five percent (85%) over any twenty-four (24) consecutive Months during the Term excepting to the extent due to an MPT Failure (which exception may apply only once during the Term), provided that the 30-Day cure period indicated in Section 12.1(C) does not apply and Seller may cure by remediating the cause of the shortfall of Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the eighty-five percent (85%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of an MPT Failure of the steps that Seller is taking to remediate the failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving such MPT Failure.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this ESA, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; *provided*, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise; or

(4) Buyer's assignment of this ESA except as permitted in accordance with Article 18.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this ESA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Buyer's actual fraud, waste, tampering with Seller-owned facilities or other material misrepresentation or misconduct in connection with this ESA or the operation of the Project;

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(3) Any representation or warranty made by Buyer in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term, if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an uncured Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this ESA from the Defaulting Party as set forth in Section 12.3(B); (ii) exercise its rights pursuant to Section 12.5; (iii) suspend performance; (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security; and (v) exercise its rights to terminate this ESA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled, subject to the limitation on damages set forth in Section 12.7, to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date. If Seller is the Defaulting Party, the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include the Replacement ESS Costs notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which may include Future Environmental Attributes.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment, plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. Seller shall calculate the Seller Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(B). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of any actual or threatened breach of any material performance obligation of the other Party under this ESA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this ESA shall be cumulative of and shall be in addition to every other right or remedy provided for in this ESA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, either Party may send the other Party an invoice for such damages or other amounts as are due to the Party providing the invoice at such

time from the other Party under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this ESA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE 13
## Contract Administration and Notices

13.1 Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered, mailed via overnight service with signature required upon receipt, or delivered via means of electronic transmission (with receipt confirmed) to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this ESA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this ESA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this ESA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All

records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, dispatch and scheduled Discharge Energy delivered, Charging Energy received, and House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records, subject to such Party's ability to redact information it reasonably deems competitively sensitive; *provided*, such redactions do not prohibit a Party's ability to exercise its rights and perform its obligations under this ESA.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) quarterly construction progress reports until the start of construction and monthly thereafter, in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B); and (ii) reports of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this ESA; and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this ESA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such

Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; and (iv) does not, except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this ESA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the incurred expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this ESA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this ESA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature

of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

## ARTICLE 14
## Force Majeure

14.1 Definition of Force Majeure Event.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises after the Execution Date that (i) is not reasonably foreseeable, (ii) is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, (iii) cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and (iv) adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic, including COVID-19, shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this ESA is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory

approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws or material or serial defects; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of three hundred sixty-five (365) Days from its inception, either Party may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this ESA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this ESA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days after the Party becomes aware of the Force Majeure Event; *provided* that notice given after such ten (10) Business Day period is effective only for the period after the notice is given, of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance

shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event prevents the ability of either Buyer or the Transmission Provider to accept Discharge Energy from the Project, deliver Charging Energy to the Project, or otherwise prevents the ability of the ESS to deliver Product, then the hours during which the Force Majeure Event occurs shall be Seller Excused Hours and excluded from the payment calculations as set forth in Section 8.1.

## ARTICLE 15
## Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this ESA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA.

(C) The obligations of Seller under this ESA are valid and binding obligations of Seller.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

(J) Seller has not sold, delivered, or transferred the Future Environmental Attributes to any other Person, in whole or in part.

(K) All right, title, and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(L) Subject to Section 7.3, each Future Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 et seq., and Title 17.9.572 NMAC.

(M) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(N) Except as expressly set forth in this ESA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(O) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(P) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this ESA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA.

(C) This ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

## ARTICLE 16
## Insurance

16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers (i) rated at least A- VII by A.M. Best, (ii) rated "A" or better by Standard & Poors, or (iii) that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this ESA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this ESA shall cover occurrences during the Term of this ESA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this ESA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this ESA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer(or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17
## Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the ESA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this ESA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this

Section 17.1 as Confidential Information in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval in connection with (i) the execution and performance of this ESA; (ii) a final order or other regulatory determination from the NMPRC (A) that Buyer may recover the costs; (B) approving revisions to the Special Services Contract; (iii) any waivers as set forth in Buyer's request for approval of this ESA; and (iv) the execution and performance of the additional renewable energy procurement under the Special Service Contract (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to a motion for rehearing or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller, Retail Customer and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this ESA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This ESA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if neither Buyer nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made by Buyer or Retail Customer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this ESA should remain in effect. Upon automatic termination, this ESA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA. If the Parties and Retail Customer are unable

to mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties and Retail Customer conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(3) If the NMPRC, for any reason, has not issued NMPRC Approval of all Requested Actions by December 31, 2025 ("**Regulatory End Date**"), then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

## ARTICLE 18
## Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this ESA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) a collateral assignment to a Lender, in accordance with Section 18.6, (ii) any assignment or transfer of this ESA by Seller to an Affiliate of Seller; or (iii) any assignment or transfer of this ESA by Seller to a Person succeeding

to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (ii) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) except in the case of an assignment or transfer pursuant to clause (ii), delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA.

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this ESA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this ESA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this ESA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this ESA with the Affiliate as if such Person had been named under this ESA; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this ESA made without fulfilling the requirements of this ESA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this ESA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this ESA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this ESA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this ESA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this ESA to Seller's Lenders pursuant to Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this ESA.

## ARTICLE 19
## Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed ESS Capacity ("**Development Security"**) within the earlier of (a) ninety (90) Days after the Execution Date and (b) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed ESS Capacity (the "**Delivery Term Security**"). Seller may, at its discretion, convert all or part of the Development Security to Delivery Term Security by written notice to Buyer. Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer, except that the aggregate amount of such replenishment during the Term shall not exceed three times (3x) the Delivery Term Security requirement. Development Security shall not be replenished. Buyer will return the Development Security to Seller in full within fifteen (15) Days after Seller posts Delivery Term Security. Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92$^{nd}$) day after termination of this ESA in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch

of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is NEECH or Creditworthy, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) days of expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this ESA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this ESA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this ESA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of

this ESA, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this ESA.

## ARTICLE 20
## Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the

foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21
## Governmental Charges

21.1 Allocation of Governmental Charges. In the event of any contradiction between this Section 21.1 and Section 9.7, Section 9.7 shall control. In the event of any contradiction between this Section 21.1 and Section 22.2, this Section 21.1 shall control. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer the Product that are imposed prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of the Product that are imposed at and from the taking of the Product by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with

all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

## ARTICLE 22
## Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this ESA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Rate Changes. The terms and conditions and the rates for service specified in this ESA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, neither Party will apply to FERC to change the rates in this ESA pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

22.4 Certain Third Party Beneficiary Rights

(A) In executing this ESA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly provided in Section 22.4(B), nothing in this ESA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this ESA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this ESA, Retail Customer is an express third-party beneficiary to this ESA. The provisions of this ESA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as an express third party beneficiary hereof as if it were a

Party hereto. In addition and without limiting the foregoing, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer notice of a change in the location of the Site;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project;

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the ESA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the ESA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed.

22.5 Relationship of the Parties.

(A) This ESA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this ESA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this ESA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the ESA and their application not adversely affected thereby shall remain in force and effect; *provided, however,* that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this ESA with a view toward effecting the purposes of this ESA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this ESA constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to approval by any Governmental Authority with jurisdiction over this ESA, this ESA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further,* that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further,* that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This ESA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this ESA are for ease of reference only and do not constitute a part of this ESA.

22.12 Counterparts. This ESA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this ESA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this ESA shall be brought in the United States District Court for the District of New Mexico; the parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS ESA. **EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH**

**ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, technical advisors, contractors, consultants, legal counsel, and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this ESA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this ESA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this ESA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this ESA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this ESA that relates solely to this ESA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this ESA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information to make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall notify Buyer as soon as reasonably practicable of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("**Data Breach**") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access.

(A) Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this ESA and the Environmental Attributes that are generated under this ESA and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA and the creation, sale or retirement of such Future Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain (if such rights are held by someone other than Seller) and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project (which reasonableness may vary according to the notice Seller receives from Buyer) for the purposes of furthering the creation, production, and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this ESA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this ESA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Should Seller have a dedicated operations and maintenance or other building associated with the Project, signage will be included inside such building(s), the size and style of which will be reasonably and mutually agreed between Seller and Buyer after consultation with Retail Customer, displaying information about Retail Customer's affiliation with the Project and Retail Customer's logo. In addition, Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any

of its obligations or liability under this ESA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable, and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this ESA constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this ESA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the ESA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the following provisions apply for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller

or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8-K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use commercially reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel, is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

(F) Seller shall provide Buyer all such information as Buyer shall reasonably request for Buyer or Retail Customer compliance with the Scope Reporting Rule.

22.19 Telephone Recording. Each Party to this ESA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the

Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this ESA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this ESA and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this ESA in accordance with Section 12.4. In connection with the performance of this ESA and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses incurred by Seller, Seller Parties or Contractors are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will promptly report to Buyer in writing of any actual or threatened breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Government Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Facility or the Site, Seller represents and warrants that, to the best of its knowledge, none of its Contractors has engaged in offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. Seller will require (through contract or other obligation) and enforce Contractors expressly agreement to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and Buyer shall have the right to withhold further payments after Buyer has provided Seller notice of such audit without any liability to Seller until Buyer is reasonably satisfied that no breach has occurred; provided that Buyer shall make such payments with interest at the Default Rate if Buyer is reasonably satisfied that no breach has occurred. If the ESA is terminated

pursuant to an Event of Default under Section 12.1(A)(10), Buyer shall have no obligation to make further payments hereunder.

22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party or its Contractors to be responsible for, exporting and importing any equipment or property (to the extent such equipment or property are exported or imported) that Seller, Seller Parties or Seller's Contractors, as applicable, import with respect to the Facility, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority with respect to exporting or importing such equipment or property.

(B) In no instance may Seller, Seller Parties or Seller's Contractors list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List (at the time provided), or (ii) originated, offloaded or transferred to a different ship or carrier in any Sanctioned Territory (at the time of origination, offloading or transfer, as applicable).

(D) At Buyer's written request, Seller shall provide to Buyer all Trade Control related documentation in Seller's possession which Seller may share in compliance with confidentiality obligations, as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with), or respond to enquiries from any Governmental Authority in relation to, Trade Controls; provided that, if such Trade Control related documentation is in possession of Seller's Contractors but not Seller, Seller shall make commercially reasonable efforts to request from such Contractor the required documentation and, to the extent required, permission to disclose such documentation to Buyer.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and that as of the Execution Date none of its Contractors is a Sanctioned Person and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not directly engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this ESA, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure that its Contractors expressly agree in writing to Trade Controls undertakings, representations, and warranties substantially similar to this this Section 22.21 (Trade Controls) with respect to any equipment that such Contractor imports into the United States or such Contractor's work in connection with this Agreement; provided that, a failure by Seller solely to comply with its obligations under this clause (g) shall not be a default under this Agreement.

(H) Notice. If Seller becomes aware that (a) any breach of the terms of If Seller becomes aware that (a) any breach of the terms of this Section 22.21 has occurred or is likely to occur, or (b) Seller, any Seller Party, or any Contractor has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days thereof.

(I) Excusal. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal under Sanctions; provided that if such excused performance (including making any payments) becomes no longer illegal under Sanctions, Buyer shall perform such obligation (including making of any previously excused payment).

(J) Subject to Section 12.1(B)(8) and the cure period therein, Buyer may terminate this ESA, within five (5) Business Days and without further liability, upon written notice to the Seller, if the Seller has breached Section 22.21(A), (B), (C), or (E), in which case, the Buyer shall have no obligation to make further payments to Seller to the extent that making such payments would be illegal under Sanctions.

22.22 Change in Law. If a Change in Law occurs that makes it impossible or illegal for a Party to perform an obligation under this ESA lawfully, the Parties shall negotiate in good faith to amend this ESA within sixty (60) Days after the affected Party provides written notice to the other Party with respect to such Change in Law as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties as of the Effective Date; provided, however, that a waiver by the Party owed the illegal or impossible performance of the obligation to perform shall restore the allocation without need for an amendment or further action of the Parties. In the absence of such a waiver, if the Parties fail to enter such an amendment by the end of such sixty (60) Day period, the Parties shall refer the issue for dispute resolution under Section 13.8.

*[Signature page(s) follow]*

IN WITNESS WHEREOF, the Parties have caused this ESA to be duly executed as of the date first above written. This ESA shall not become effective as to either Party unless and until executed by both Parties

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

Name Omni Warner

Title Vice President

STAR LIGHT ENERGY CENTER, LLC

By: _____

Name: Anthony Pedroni

Title: Vice President

Legal Review Completed AF

[Signature Page to Energy Storage Agreement]

**EXHIBIT A**
(to Energy Storage Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: Star Light Energy Center, LLC
2. Location: Valencia County, New Mexico

   Latitude: 34°44'22.46"N Longitude: 106°47'34.25"W
3. Owner (if different from Seller): N/A
4. Operator: Seller or Affiliate thereof
5. Equipment/Fuel:
   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Energy Storage
   b. Total number of units at the Project: Approximately 105 energy storage containers
   c. Total nameplate capacity (AC): 100 MW
   d. Total capacity at point of delivery: 100 MW
   e. Additional technology-specific information: Approximately 35 inverters
6. Project Schedule:

| Key Milestone | Date |
|---|---|
| LGIA Execution | 7/30/2024 |
| Major Equipment Supply Agreements Executed | 1/15/2026 |
| Discretionary Permits | 12/2025 |
| Close Financing | 12/1/2026 |
| 30% Design Complete | 07/2025 |
| Start of Project Construction | 11/15/2025 |
| First Major Equipment Delivered to Site | 6/2026 |
| Interconnection In-Service Date | 7/1/2026 |
| Commissioning Start Date | 11/2026 |
| Expected Commercial Operation | 12/1/2026 |
| Guaranteed Start Date | Defined in 3.1 |

7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the ESA.

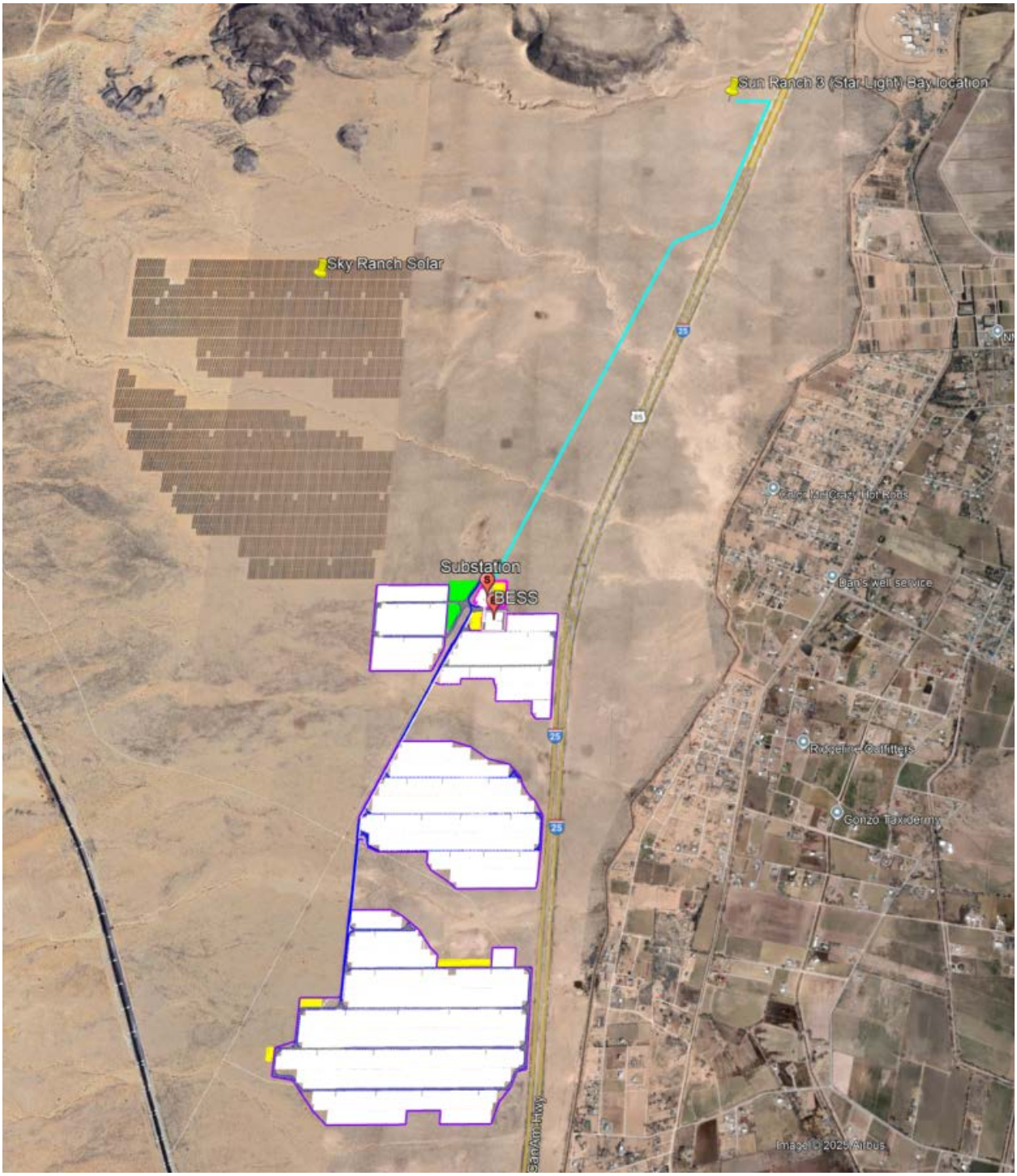


**EXHIBIT B**
(to Energy Storage Agreement)

**ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram a of the Project, which will be provided by Seller within ninety (90) Days of the Execution Date. The diagrams indicate the following:

   - Interconnection Facilities;
   - the network upgrades;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
   - communications and telemetry configuration with associated redundancy;
   - the House Energy power source and associated dedicated electric meter; and
   - redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is PNM's 115kV Sun Ranch Switching Station.

**EXHIBIT C**
(to Energy Storage Agreement)

**DESCRIPTION OF SITE**

BEING PART OF SECTION 13 AND 24, T-6-N, R-1-E, NMPM, WEST OF INTERSTATE 25, AND LOTS 32-34, LOT 47, LOT 48, AND THE NORTH HALF OF LOT 49, SECTION 23, T-6-N, R-1-E, NMPM, VALENCIA COUNTY, NEW MEXICO, OUT OF A TRACT TO THE NEW MEXICO DEVELOPMENT PARTNERS, L.P. ACCORDING TO THE DOCUMENT RECORDED IN BOOK 358, PAGE 15579, VALENCIA COUNTY, NEW MEXICO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND 2-INCH IRON PIPE WITH CAP MARKED "RPLS 7438" (GRID N:1366048.33, GRID E:1475569.33) FOUND FOR THE NORTHWEST CORNER OF SECTION 13, T-6-N, R-1-E, NMPM, VALENCIA COUNTY, NEW MEXICO;

THENCE NORTH 89°49'28" EAST, ALONG THE LINE COMMON WITH SAID SECTIONS 12 AND 13, A DISTANCE OF 3,494.04 FEET TO A CALCULATED POINT ON THE WEST RIGHT OF WAY OF INTERSTATE HIGHWAY 25, (300' RIGHT OF WAY), FOR THE NORTHEAST CORNER OF THIS TRACT, LYING SOUTH 11°04'32" WEST, A DISTANCE OF 48.47 FEET FROM A T-BAR MONUMENT MARKED "780+00" FOUND ON SAID RIGHT OF WAY;

THENCE ALONG A CURVE TO THE LEFT, WITH SAID WEST RIGHT OF WAY LINE, HAVING A RADIUS OF 11,610.42 FEET, AN ARC LENGTH OF 2,057.93 FEET, A DELTA ANGLE OF 10°09'20", A CHORD BEARING OF SOUTH 05°52'18" WEST AND A CHORD DISTANCE OF 2055.24 FEET TO A FOUND T-RAIL MONUMENT FOR A POINT OF TANGENCY;

THENCE SOUTH 00°47'38" WEST, WITH SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 6,851.85 FEET TO A CALCULATED CORNER FOR A POINT OF CURVEATURE TO THE RIGHT;

THENCE ALONG A CURVE TO THE RIGHT, WITH SAID RIGHT OF WAY LINE, HAVING A RADIUS OF 22,770.72 FEET, AN ARC LENGTH OF 683.97 FEET, A DELTA ANGLE OF 1°43'16", A CHORD BEARING OF SOUTH 01°39'33" WEST AND A CHORD DISTANCE OF 683.94 FEET TO A CALCULATED POINT FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 89°57'11" WEST, ACROSS SAID SECTION 24, A DISTANCE OF 3,807.06 FEET TO A CALCULATED CORNER ON THE WEST LINE OF SAID LOT 49 FOR THE SOUTHWEST CORNER OF THE NORTH HALF OF SAID LOT 49, FOR THE EXTERIOR CORNER OF THIS TRACT;

THENCE NORTH 00°20'16" EAST, WITH SAID COMMON LINE, A DISTANCE OF 330.97 FEET TO A CALCULATED CORNER FOR THE COMMON CORNER OF SAID LOTS 47, 48, 49, AND 50 FOR AN INTERIOR CORNER OF THIS TRACT;

THENCE NORTH 89°39'38" WEST, WITH THE COMMON LINE OF LOTS 47 AND 50, A DISTANCE OF 661.17 FEET TO A CALCULATED CORNER FOR THE COMMON CORNER OF LOTS 46, 47, 50, AND 51 FOR AN EXTERIOR CORNER OF THIS TRACT;

THENCE NORTH 00°19'48" EAST, WITH THE COMMON LINE OF LOTS 46 AND 47 AND LOTS 34 AND 35, A DISTANCE OF 1323.29 FEET TO THE COMMON CORNER OF LOTS 30, 31, 34, AND 35 FOR AN INTERIOR CORNER OF THIS TRACT;

THENCE SOUTH 89°41'09" EAST, WITH THE COMMON LINE OF LOTS 31 AND 34, A DISTANCE OF 661.35 FEET TO THE COMMON CORNER OF LOTS 31, 32, 33, AND 34 FOR AN INTERIOR CORNER OF THIS TRACT;

THENCE NORTH 00°20'16" EAST, WITH THE COMMON LINE OF LOTS 31 AND 32, A DISTANCE OF 661.86 FEET TO THE COMMON CORNER OF LOTS 17, 18, 31, AND 32 FOR AN EXTERIOR CORNER OF THIS TRACT:

THENCE SOUTH 89°41'30" EAST, WITH THE COMMON LINE OF LOTS 17 AND 32, A DISTANCE OF 661.44 FEET TO THE EAST MOST COMMON CORNER OF LOTS 17 AND 32 AND THE COMMON LINE BETWEEN SECTIONS 23 AND 24 FOR AN INTERIOR CORNER OF THIS TRACT;;

THENCE NORTH 00°20'43" EAST, WITH THE EAST LINE OF SAID SECTION 23, COMMON WITH THE WEST LINE OF SAID SECTION 24, A DISTANCE OF 1958.80 FEET TO A 1-INCH IRON PIPE WITH AN ALUMINUM CAP MARKED "14/13, 23/24, RPLS 7438" FOUND FOR THE COMMON CORNER TO SECTIONS 13, 14, 23, AND 24 FOR AN INTERIOR CORNER OF THIS TRACT;

THENCE NORTH 00°31'58" WEST, WITH THE COMMON LINE TO SECTIONS 13 AND 14, A DISTANCE OF 5273.26 FEET TO THE POINT OF BEGINNING, CONTAINING 764.906 ACRES, MORE OR LESS

**EXHIBIT D**
(to Energy Storage Agreement)

**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**Notices:**

**Delivery Address:**

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

**Invoices:**

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:
PNMEAM@pnmresources.com

**Scheduling:**

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

**Payments:**

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

**Wire Transfer:**

Wells Fargo Bank
ABA# [●]
Albuquerque, New Mexico
ME Whsle Pwr Depository: [redacted]
Attn: EA-Wholesale Power Marketing

**Contract Manager:**

**Star Light Energy Center, LLC**

**All Notices/Invoices:**

**Delivery Address:**

STAR LIGHT ENERGY CENTER, LLC
Attn: Business Management
700 Universe Blvd.
Juno Beach, FL 33408
Phone: 561-801-8079
Email: DL-NEXTERA-BM-NEWMEXICO@nexteraenergy.com

With copy to:
NextEra Energy Resources, LLC
Attn: General Counsel
700 Universe Blvd.
Juno Beach, FL 33408
Email: NEER-General-Counsel@nexteraenergy.com

**Wire Transfer:**

Bank of America
ABA: [redacted]
Acct: [redacted]

**With additional Notice of an Event of Default, termination and other legal notices to:**

NextEra Energy Resources, LLC
Attn: Business Management
700 Universe Blvd.
Juno Beach, FL 33408
Phone:561-801-8079
Email:DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com

Public Service Company of New Mexico
Attention: Eric Meadors
2401 Aztec Dr. NE
Albuquerque, NM 87107
Telephone: (505) 241-2179
Email: eric.meadors@txnm.com

**With additional Notice of an Event of Default, termination and other legal notices to:**

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

**With a copy to:**

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

**Project Manager:**

NextEra Energy Resources, LLC
Attn: Ashley Sgaliardich – Project Director
700 Universe Blvd.
Juno Beach, FL 33408
Phone: 561-876-5215
Email:Ashley.sgaliardich@nexterenergy.com

**EXHIBIT E**

(to Energy Storage Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

| PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION | GOVERNMENTAL ENTITY |
|---|---|
| Floodplain Permit | City of Belen |
| Structural Building Permit | New Mexico Construction Industries Division (NMCID) |
| Electrical Building Permit | New Mexico Construction Industries Division (NMCID) |
| Special Use Permit (SUP) | City Of Belen |
| Determination of No Hazard (DNH) | FAA |

NOTE: Final actual permit requirements may vary from the above listings due to Code and Regulatory requirements as needed for project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of the Agreement.

**EXHIBIT F**
(to Energy Storage Agreement)

**COMMISSIONING AND ANNUAL TESTS**

All tests described in this Exhibit F will be conducted in accordance with equipment manufacturers' recommendations and current test procedures, including performance adjustments based upon ambient conditions. ESS Reliability Testing and Operational Reliability Testing may be run simultaneously.

**Commissioning Tests**

A. SCADA Functionality Test (or equivalent)
B. Automatic Generation Control (AGC) Functionality Test
C. Voltage Setpoint Functionality Test
D. SCADA Historian Data Link Functionality Tests
E. ESS Reliability Tests

**Commissioning and Annual Performance Tests**

A. ESS Unit Capabilities Tests, including:
    a. ESS Capacity Test including ESS Roundtrip Efficiency Determination
    b. ESS Response Delay Test
    c. Frequency Response Capability Test

**Commissioning Tests**

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

**A. SCADA Functionality Test**

**Purpose:**
This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering (POE). This test must be performed prior to energization of the Energy Storage System (ESS).

**Procedure:**
Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall then contact Buyer's POE Team 4-6 weeks in advance to submit a database modification request (DBMOD) and request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. Testing phases 1-3 (below) require only POE contacts, but phase 4 will also require Buyer's Operator support.

The test shall include, but is not limited to, the following verification:

1) Status points
   - Verify POE is receiving the intended state of Seller's switches and breakers
   - Verify POE can see and change the value of states of Seller's switches and breakers
   - Verify the functionality of the local/remote mode indication status

2) Analog points
   - Verify POE is receiving the intended value
   - Verify POE receives a changed value
   - Verify values have the correct scaling

3) Accumulator points (as applicable)
   - Verify POE is receiving an inserted value
   - Seller reverts to original value then verifies POE receives the new value
   - Verify values have the correct scaling

4) Control points (as applicable)
   - Verify the functionality of all breakers to be controlled by Buyer's POE
   - Verify the functionality of all switches to be controlled by Buyer's POE
   - Verify POE can control all reclosers
   - Verify on-site personnel have capability of changing states and values
   - Verify the functionality of all Setpoints
   - Verify the functionality of all feedback points

Completion of this test will be acknowledged verbally between Buyer's personnel and the stakeholders involved and confirmed thereafter in writing (email is acceptable). This test must be repeated for changes to the states table(s) and/or list of points.

**B. Automatic Generation Control (AGC) Functionality Test**

Purpose:
This test will demonstrate the ability of the ESS to synch to AGC. This test will occur after the ESS system has energized.

System starting state:
The ESS will be in the on-line state with a SOC between [●]% and [●]% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure:
Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team 4-6 weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour Operational activities.

**Remote Mode Testing**

Seller will set the ESS to REMOTE mode, and verify the unit accepts AGC.

- Operator will send a setpoint to the unit
- Validate the ESS unit responds to the setpoint
- Operator will send a setpoint above and/or below ESS operation limits
    - Validate the ESS sends alarms
    - Validate the ESS unit does not attempt to charge/discharge to the value sent

Buyer's Operator will set the AGC Control mode to MARKET:
- Validate the ESS unit responds to a DOT from CAISO

Buyer's Operator change the ESS to MARKET in AGC
- Validate the ESS unit changes the control mode
- Validate the ESS unit follows gross MW requested in Planner Pro

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG
- Hold for up to 10 minutes
- Validate the ESS unit responds to ACE of +/- 10 MW

**Local Mode Testing**
On-site personnel change the ESS to LOCAL mode
- Validate the ESS unit changes from REMOTE to LOCAL mode
- Validate the ESS unit follows gross MW requested on-site
- Validate the ESS unit does not respond to setpoint changes

System end state:
The ESS will be in the on-line state and with control mode set to LOCAL.

**C. Voltage Setpoint Functionality Test**

*Test procedures to be agreed upon at a later date, consistent with the timeline set forth in Section 10.2 of the ESA and ESS manufacturer's then-current operating and testing*

*requirements*

**D. SCADA Historian Data Link Functionality Test**

The SCADA historian data link will facilitate transfer of real time SCADA points which are used for monitoring and analysis, but not necessarily for ESS control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party) and assist as necessary to set up the SCADA historian data link.

Seller shall prepare and submit to Buyer a SCADA historian data link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA historian data link Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA historian data link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

**E. ESS Reliability Testing**

**E.1 Cycling Reliability**

A. Purpose of Test

To demonstrate the ability of the ESS to reliably perform full charging and discharging cycles.

B. Test Procedure

The cycling reliability test shall include the following test elements:

1. the discharging of the ESS from 100% of the Maximum State of Charge to 0% of the Maximum State of Charge followed by;
2. following a prescribed period of "rest" per the OEM guidelines, the charging of the ESS from 0% of the Maximum State of Charge to 100% of the Maximum State of Charge.

C. Test Results

The cycling reliability test shall be satisfied when the ESS successfully performs three (3) full charge and discharge cycles with the ESS control system in auto without any alarms that indicate an adverse condition that impacts system operations below operating specifications/nameplate, faults, trips, or manual intervention required.

**E.2 Operational Reliability**

A. Purpose of Test

To demonstrate the short-term reliability of the ESS.

B. Test Procedure

The ESS shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the ESS remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any material alarms, faults, trips, or manual intervention required.

**Commissioning and Annual Performance Tests**

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the ESA) throughout the term of the ESA.

**F. ESS Unit Capabilities Testing**

F.1 ESS CAPACITY TEST

F.1.1 General

The ESS Capacity Test ("**ESS Capacity Test**" or "**ECT**") is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

F.1.2 Requirements Applicable to all ESS Capacity Tests

A. Purpose of Test. Each ECT shall:

(1) verify compliance with the Guaranteed ESS Capacity;

(2) determine the Roundtrip Efficiency (RTE) of the ESS;

B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

(1) discharge time (minutes);

(2) ESS Charging Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy In");

(3) ESS Discharge Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy Out");

(4) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to the Point of Delivery, in MWh ("Point of Delivery Energy Out");

(5) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh ("Point of Delivery Energy In");

C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

D. Test Elements and Sequence. Each ECT shall include the following test elements:

(1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);

(2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

(3) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;

(4) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity;

(5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

(1) General. At all times during an ECT, the ESS shall be operated in

compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section F.1.2.F of these ESS Capacity Test Procedures.

(3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.

(4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.

F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section F.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT,

which report shall include:

(1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for the ESS Electric Meter Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;

(3) The ESS Capacity as determined by the ECT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section F.1.2.F of this ESS Capacity Test Procedure.

H. Supplementary ESS Capacity Test Protocol. No later than ninety (90) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the "Supplementary ESS Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first Four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) Four (4) hours) shall be divided by Four] ([4]) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.

J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$Roundtrip\ Efficiency\ (\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})} \times 100\%$$

F.2 ESS RESPONSE DELAY TEST

**A. Purpose of Test:**

1. Determine the System Charge Latency of the ESS
2. Determine the Charge Ramp Rate of the ESS
3. Determine the System Discharge Latency of the ESS
4. Determine the Discharge Ramp Rate of the ESS

**B. Test Conditions:**

The ESS Facility will be in the on-line state at between 30% and 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR.

**C. Test procedure:**

**Measured Charge Latency:**

1. Send an active power charge command of PMAX to charge the batteries
2. The time measured from when the ESS receives the PMAX charge command until the power measured at the ESS Electric Metering Device changes from 0 MW to at least 1% of charge PMAX shall be the Actual System Charge Latency

**Measured Charge Ramp Rate:**

1. Send an active power charge command of PMAX to charge the batteries
2. The differential in MW of ESS Charging Energy divided by the time measured to ramp from 1% to charge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Charge Ramp Rate.

**Measured Discharge Latency:**

1. Send an active power discharge command of PMAX to discharge the batteries
2. The time measured from when the ESS receives the PMAX discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge PMAX shall be the Actual System Discharge Latency

**Measured Discharge Ramp Rate:**

1. Send an active power discharge command of PMAX to discharge the batteries
2. The differential in MW of ESS Discharge Energy divided by the time measured to ramp from 1% to discharge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Discharge Ramp Rate.

**D. Determination of ESS Response Shortfall:**
The calculation below will demonstrate the determination of the ESS Response Shortfall used to determine ESS Response Shortfall Damages according to Section 3.13. For clarity, any occurrence of an Actual System Charge Latency Shortfall, an Actual System Discharge Latency Shortfall, an Actual Discharge Ramp Rate Shortfall, or an Actual Charge Ramp Rate Shortfall shall be considered an ESS Response Shortfall that shall result in an ESS Response Shortfall Damage in accordance with Section 3.13. An ESS Response Shortfall Damage shall be due for each instance in which any of the following equations result in a positive value.

a) An "Actual System Charge Latency Shortfall" shall be calculated, which shall be equal to:

*Actual System Charge Latency Shortfall = Max (Guaranteed System Latency, Actual System Charge Latency) - Guaranteed System Latency*

ii. An "Actual Charge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

*Actual Charge Ramp Rate Shortfall = Max (Guaranteed Charge Ramp Rate, Actual Charge Ramp Rate) - Guaranteed Charge Ramp Rate*

iii. An "Actual System Discharge Latency Shortfall" shall be calculated, which shall be equal to:

*Actual System Discharge Latency Shortfall = Max (Guaranteed System Latency, Actual System Discharge Latency) - Guaranteed System Latency*

iv. An "Actual Discharge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

*Actual Discharge Ramp Rate Shortfall = Max (Guaranteed Discharge Ramp Rate, Actual Discharge Ramp Rate) - Guaranteed Discharge Ramp Rate*

For the purposes of these equations Guaranteed Charge & Discharge Ramp Rate means either the Guaranteed values in Section 3.12 or such other Buyer selected lesser ramp rate values per this Section F.2 of this Exhibit F.

**F.3 Frequency Response Capability Test**

**A. Purpose of Test:**

Demonstrate that the Energy Storage System is able to react to simulated changes in frequency applied by injecting a Frequency Profile at the Site Controller level.

**B. Definitions:**

| Term | Value/Meaning |
|---|---|
| Guaranteed PMAX Charge Power | 100 MW |
| Guaranteed PMAX Discharge Power | 100 MW |
| Guaranteed Frequency Response | 100 MW / 0.1 Hz |
| Point of Guarantee | High side of the generator step up transformer (115 kV) |
| Point of Measurement | High side of the generator step up transformer (115 kV) |
| CT Error | High side of the generator step up transformer (115 kV) |
| PT Error | 0.15% (estimated). The PT Error should be the error of the Potential Transformer used during the test. |
| Meter Error | 0.35% (estimated). The Meter Error should be the error of the Meter used during the test. |
| Loss Adjustment Factor | 0.1%.The Loss Adjustment Factor shall take into account all electrical losses, including cabling, switchgear, and transformer losses (load and no load) between the Point of Measurement and Point of Guarantee |
| $FreqLow$ | Low Frequency deadband setpoint |
| $FreqHigh$ | High Frequency deadband setpoint |
| $\Delta FreqLow$ | Frequency delta for low frequency |
| $\Delta FreqHigh$ | Frequency delta for high frequency |
| $\Delta Power\ Low$ | Power change for low frequency support |
| $\Delta Power\ High$ | Power change for high frequency support |

**C. Pre-Test Conditions:**

1. If the ambient temperature is below 20°C during the 24 hours prior to the Test, the Energy Storage System shall be pre-heated for 8 hours prior to the test. If the ambient temperature is above 50°C, the Test shall be postponed until the temperature is expected to drop below 50°C for a minimum of 24 hours.
2. Charge or discharge the Energy Storage System so that its SOC is between 30% and 60%.
3. If a ramp rate is required, the Energy Storage System should be configured with the appropriate ramp rate.
4. The Energy Storage System should report Available Discharge Power that is equal to or

greater than the Guaranteed PMAX Discharge Power.
5. The Energy Storage System should report Available Charge Power that is equal to or greater than the Guaranteed PMAX Charge Power.
6. A frequency injection profile shall be applied at the Site Controller in the form XX test points. The frequency profile shall be agreed upon between the Parties prior to the test. The Site Controller shall be configured to source the frequency readings from the uploaded profile.
7. The charge portion of the test shall be conducted when energy available from the grid is expected to be greater than the Guaranteed PMAX Charge Power unless specified otherwise by Buyer. The Parties shall ensure that the Energy Storage System is not limited by the grid in its ability to discharge up to the Guaranteed PMAX Discharge Power throughout the duration of the test.

**D. Test Procedure:**

1. Confirm the Energy Storage System has zero output.
2. Initiate the reading from the Frequency Profile.
3. Wait for the full execution of the profile.

**E. Recorded Values:**

1. Battery Real Power (MW)
2. Grid Frequency (Hz)

**F. Acceptance Criteria:**

For each under-frequency event in the profile with a deviation from nominal of Frequency Low Deviation, in steady state:

*Expected PowerUnder-Freq * (1 – Meter Error) ≤ Battery Real Power ≤ Expected PowerUnder-Freq * (1 + Meter Error)*

Where the expected Energy Storage System response is defined as:

$$Expected\ Power_{Under\text{-}Freq} = \text{Min}\ [(\Delta PowerLow / \Delta FreqLow) * Frequency\ Low\ Deviation, Guaranteed\ Discharge\ PMAX]$$

Frequency Low Deviation = Simulated Frequency – FreqLow

For each over-frequency event in the profile with a deviation from nominal of *Frequency High Deviation*, in steady state:

$$Expected\ Power_{Over\text{-}Freq} * (1 - Meter\ Error) \leq Battery\ Real\ Power \leq Expected\ Power_{Over\text{-}Freq} * (1 + Meter\ Error)$$

Where the expected Energy Storage System response is defined as:

*Expected Power*$_{Over\text{-}Freq}$
= Max [(ΔPowerHigh / ΔFreqHigh)* *Frequency High Deviation, -Guaranteed Charging PMAX*]

*Frequency High Deviation = Simulated Frequency – FreqHigh*

**G. Grid-Forming Capabilities Tests (LATER)**

- Synthetic Inertia
- Voltage Persistence

**EXHIBIT G**
(to Energy Storage Agreement)

**INSURANCE COVERAGES**

Seller shall obtain and maintain the following insurance coverages, at a minimum:

**A. Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

**C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

**D. Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E. Network Security and Privacy Liability**. Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy

shall be written with minimum annual limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

**F. Property Insurance**. During construction and operation, Seller shall provide or arrange the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost, except that builders' risk insurance, which must qualify as "All Risk" insurance during the construction period, shall be in the amount of two hundred million dollars ($200,000,000). The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

**EXHIBIT H**
(to Energy Storage Agreement)

**AVAILABILITY GUARANTEES**

**Section 1. Definitions.**

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the ESA.

"**Actual ESS Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

"**Aggregate ESS Availability Damages Cap**" has the meaning set forth in Section 2.1(C) of this Exhibit.

"**Annual ESS Availability Damages Cap**" has the meaning set forth in Section 2.1(C).

"**Annual Report**" has the meaning set forth in Section 2.3 of this Exhibit.

"**ESS Availability Damages**" has the meaning set forth in Section 2.1(B) of this Exhibit.

"**ESS Availability LD Rate**" has the meaning set forth in Section 2.1(B) of this Exhibit.

"**ESS Available Hours**" means for a relevant Commercial Operation Month, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Month, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Month. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Excused Hours**" means, in any Commercial Operation Month, the aggregate Seller Excused Hours for such Commercial Operation Month to the extent that the ESS is affected during such hours; provided that, for purposes of the Guaranteed ESS Availability Percentage. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Period Hours**" means the number of hours for any given Commercial Operation Month, as may be prorated for any partial Commercial Operation Month.

"**ESS Unavailable Hours**" means those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Guaranteed ESS Availability Percentage**" has the meaning set forth in Section 2.1(A) of this Exhibit.

**Section 2. Availability Guarantees.**

1. ESS Availability Guarantee.

(A) ESS Availability Guarantee. Seller guarantees that the ESS shall achieve an Actual ESS Availability Percentage equal to or greater than ninety percent (90%) in each Commercial Operation Month after the Commercial Operation Date ("**Guaranteed ESS Availability Percentage**").

(B) ESS Availability Damages. For any Commercial Operation Month during which Seller fails to meet the Guaranteed ESS Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to 50% of ESS Payment Rate per MWh ("**ESS Availability LD Rate**") below the Guaranteed ESS Availability ("**ESS Availability Damages**"). A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

(C) ESS Availability Damages Cap, Termination, and Cure Rights. The total ESS Availability Damages payable by Seller for failure to meet the Guaranteed ESS Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to One Hundred Thousand Dollars ($100,000) per MW of Guaranteed ESS Capacity ("**Annual ESS Availability Damages Cap**") and in the aggregate at a value equivalent to One Hundred Ninety Two Thousand Dollars ($192,000) per MW of Guaranteed ESS Capacity; *provided*, that in the event of (a) an MPT Failure or (b) a material serial defect not generally known in the energy storage industry, the aggregate damages shall not exceed a value equivalent to Three Hundred and Twenty Thousand Dollars ($320,000) per MW of Guaranteed ESS Capacity ("**Aggregate ESS Availability Damages Cap**") over the Term of the ESA.

2. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed ESS Availability Percentage shall be the payment of damages, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the ESA. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail to meet the Guaranteed ESS Availability Percentage.

3. Monthly Report. No later than the tenth (10th) Day of each calendar month during each Commercial Operation Year (or ten (10) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Monthly ESS Availability for the previous calendar month and the ESS Availability Damages, if any, due to Buyer (the "**Monthly Report**"). Such Monthly Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Monthly Report.

4. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the ESA.

## ATTACHMENT 1 TO EXHIBIT H

## EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES

### I. Example of Actual ESS Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

| | | Hours |
|---|---|---|
| | Monthly Hours ("MH") | 720 |
| | ESS Unavailable Hours ("EUH") | 86 |

Given these assumed facts, the Monthly ESS Available Hours for the ESS during the specific calendar month would be calculated as follows:

Monthly ESS Available Hours = MH – EUH: 634 = 720 – 86

**Monthly ESS Availability**

Given these assumed facts, the Monthly ESS Availability for the Project during the specific calendar month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Sum of Monthly Hours: 720 hours

(c) Monthly ESS Availability: (Sum of Monthly ESS Available Hours/Monthly Hours) x 100 = (634/720) x 100 = 88.1%

### II. Example of ESS Availability Damages

Example of ESS Availability Damages based on the following assumed facts:

(a) Seller's Monthly Guaranteed ESS Availability = 90%.

(b) Seller's Monthly ESS Availability = 88.1%.

(c) Seller's Guaranteed ESS Capacity = 100 MW.

Given these assumed facts, Seller calculates the ESS Availability Damages for such calendar month due to Buyer as follows:

(Seller's Monthly Guaranteed ESS Availability – Seller's Monthly ESS Availability) (the latter two expressed as a decimal) x Monthly Hours (assuming a 30-day month) x ESS Availability LD Rate x Seller's Guaranteed ESS Capacity = ESS Availability Damage

(0.90 – 0.881) x 720 x $[__] x 100 = $[___]

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 86 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

**EXHIBIT I**
(to Energy Storage Agreement)

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

**A.** WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Energy Storage Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

**B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

**1. GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

**(a)** Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].

**(b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are

deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

**2. DEMANDS AND PAYMENT.**

**(a)** If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

**(b)** A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with *Section 9* below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

**(c)** After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

**(a)** it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

**(b)** no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and

**(c)** the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of

any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**5. AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6. WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

**(a)** Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance

on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

**(b)** No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

**(c)** Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

**7.** **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

**8.** **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

**9.** **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

| *TO GUARANTOR: ** | *TO COUNTERPARTY:* |
|---|---|
| [●]*Attn:* Treasurer | [●]*Attn:* |

| | |
|---|---|
| *[Tel:* [●] *-- for use in connection with courier deliveries]* | *[Tel:* [●] *-- for use in connection with courier deliveries]* |

Any Notice given in accordance with this *Section 9* will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10. MISCELLANEOUS.**

**(a)** This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

**(b)** This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.

**(c)** This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

**(d)** The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

**(e)** Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**(f)** Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and

(ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

**(g)** COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

**(h)** Delivery of an executed signature page of this Guaranty, and any subsequent amendment(s), by facsimile or email shall be effective as delivery of a manually executed counterpart hereof. The words "execute,", "execution,", "signed,", "signature," and words of similar import in this Guaranty shall be deemed to include electronic signatures or digital signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000, the Electronic Signatures and Records Act of 1999, or any other similar state laws based on the Uniform Electronic Transactions Act.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[●]

By:_____

Name:_____

Title:_____

**EXHIBIT J**
(to Energy Storage Agreement)

**COMMERCIAL OPERATION**
**FORM OF CERTIFICATION**

This certification ("Certification") of Commercial Operation is delivered by Star Light Energy Center, LLC ("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated June 6, 2025 ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of 100 MW for four (4) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project and that the Project meets, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

| Star Light Energy Center, LLC | **[Licensed Professional Engineer]** |
|---|---|
| Signature: _____ | Signature: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| | Date: _____ |
| | License Number and LPE Stamp: _____ |

# EXHIBIT K
(to Energy Storage Agreement)

## ROUNDTRIP EFFICIENCY GUARANTEE

| Year | Annual R/T Eff |
|---|---|
| 1 | 84% |
| 2 | 83.7% |
| 3 | 83.4% |
| 4 | 83.1% |
| 5 | 82.8% |
| 6 | 82.5% |
| 7 | 82.2% |
| 8 | 81.9% |
| 9 | 81.6% |
| 10 | 81.3% |
| 11 | 81% |
| 12 | 80.7% |
| 13 | 80.4% |
| 14 | 80.1% |
| 15 | 79.8% |
| 16 | 79.5% |
| 17 | 79.2% |
| 18 | 78.9% |
| 19 | 78.6% |
| 20 | 78.3% |

**EXHIBIT L**
(to Energy Storage Agreement)

**ESS Operating Restrictions**

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions:

**1.** Maximum of three hundred sixty-five (365) Equivalent Full Cycles per Commercial Operation Year.

**2.** Maximum of two (2) Equivalent Full Cycles per day

**3.** Maximum annual average state of charge: 50%

**4.** Max operating temperature of 45°C

**5.** State of charge cannot remain below 3% for greater than 1 hour continuously

# EXHIBIT M
(to Energy Storage Agreement)

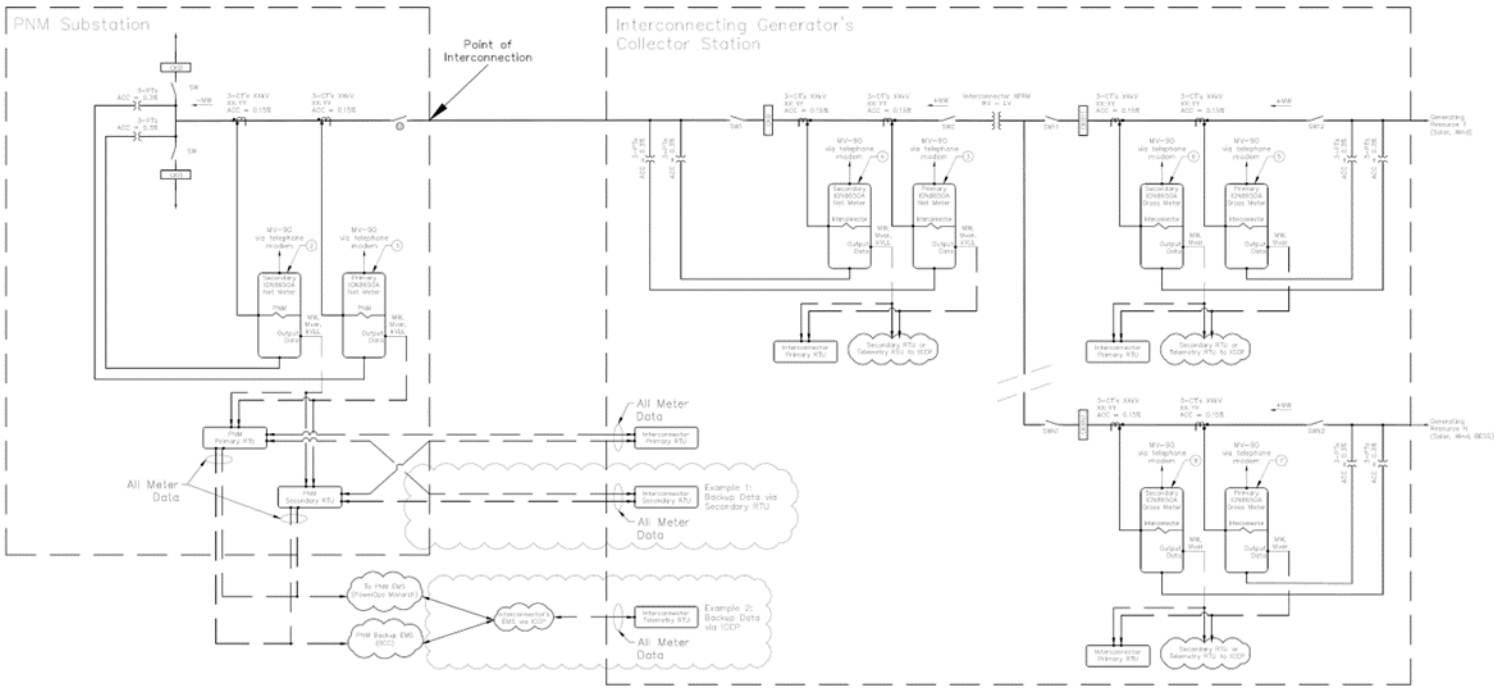
## ESS Functional Mapping

The Project's NERC verified ESS Generation Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

| | Entity Name | Point of Contact | E-mail | Phone |
|---|---|---|---|---|
| Generator Owner (GO) | | | | |
| Generator Operator (GOP) | | | | |
| Scheduling Coordinator Contact (SCC) | | | | |

**EXHIBIT N**
(to Energy Storage Agreement)

**Example Interconnection Metering Diagram**




| Meter | Description | Metering Data Requirments | Output Data |
|---|---|---|---|
| 1 | POI Meter (Primary) | Revenue quality metering data for the After-the-Fact (ATF) metering (MV90) system and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 2 | POI Meter (Secondary) | Revenue quality metering data for the After-the-Fact (ATF) metering (MV90) system and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 3 | Facility Net Meter (Primary) | Facility net output data to primary RTU for telemetry to Control Center and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 4 | Facility Net Meter (Secondary) | Facility net output data to primary RTU for telemetry to Control Center and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 5 | Gross Meter, Resource 1 (Primary) | Resource gross output data from primary RTU for telemetry to Control Center and awarness at Operations Control Center and revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 6 | Gross Meter, Resource 1 (Secondary) | Resource gross output data from primary RTU for telemetry to Control Center and awarness at Operations Control Center and backup revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 7 | Gross Meter, Resource N (Primary) | Resource gross output data from primary RTU for telemtry to Control center and awareness at Operations Control Center and revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 8 | Gross Meter, Resource N (Secondary) | Resource gross output telemetry using ICCP or backup RTU to Control center and awareness at Operations Control Center, backup revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |

Note:

1. There must be no single point of failure for the measurement and transmission of real-time metering data to PNM's EMS. This includes networking equipment and communication paths. In the event that real-time metering data becomes unavailable or unreliable, PNM will require that the interconnected generation is disconnected until access to reliable data is re-established.
2. Retail meters are not shown on this diagram. Retail loads are not served by transmission.
3. PNM SCADA data to the facility will also include Automatic Generation Control (AGC) setpoints. PNM can also provide to the interconnecting facility SCADA data on the transmission line including: status of the sectionalizing breaker(s), disconnect switch status, and the POI meter data as applicable. A full list of SCADA data to be exchanged will be coordinated between PNM and the interconnector during design for the facilities.

| REVISION | | | |
|---|---|---|---|
| NO. | DATE | BY | |
| 0 | 11-15-23 | CVR | REV'D FINALIZED TITLE BLOCK ADDED |

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PNM PUBLIC SERVICE COMPANY OF NEW MEXICO

Example IMD
(Interconnection Metering Diagram)
for Generation Interconnections

| | | |
|---|---|---|
| DR: CVR | | DATE: 11/15/2023 |
| CKD: CAG | OK: | SCALE: NONE |
| APP: | ACAD FILE: IMD-E | IMD-E 1 of 1 |
| REV. NO. 0 | | |

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REVISION

| NO. | DATE | BY |
|---|---|---|

PNM PUBLIC SERVICE COMPANY OF NEW MEXICO

| | | |
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| APP: | ACAD FILE: | |
| REV. NO. | | |

**EXHIBIT O**
(to Energy Storage Agreement)

**COMMISSIONING AND TESTING PROCESS**

**Section 1. Purpose.**

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the ESA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Diagram as outlined in Exhibit N of the ESA and complete all testing as defined in Exhibit F of the ESA.

**Section 2. Identifying Key Points of Contact.**

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the ESA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

**Table 1 – Required Information for Point of Contact List.**

| CONTACT | Company | Group | Address | Project Role | Office Phone | Mobile Phone | E-MAIL |
|---|---|---|---|---|---|---|---|
| Eric Meadors | PNM | Generation Contracts & Development | 2401 Aztec Rd NE, MS Z120, Albuquerque, NM 87107 | Contract Manager | 505-241-2179 | 505-801-7803 | Eric.Meadors@pnm.com |

The POC List shall identify, but not be limited to, the following:

**Buyer Team:** Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.
- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.
- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.
- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect ("**PCI**") modeling for functionality required for the participating resource schedule coordination ("**PRSC**") (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.
- Power Operations, "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

**Seller Team:** The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- Project Manager – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – Shall mean the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.
- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.
- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:
    - Balancing Area Authority (BAA)
    - Transmission Owner (TO)

- Transmission Operator (TOP)
- Generator Owner (GO)
- Generator Operator (GOP)
- Scheduling Coordinator (SC)
- Distribution System Operator (DSO)

**Section 3. Process Overview.**

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

**Section 3.1 Commissioning Kickoff Meeting.**

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

**Section 3.2 Pre-Commissioning.**

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

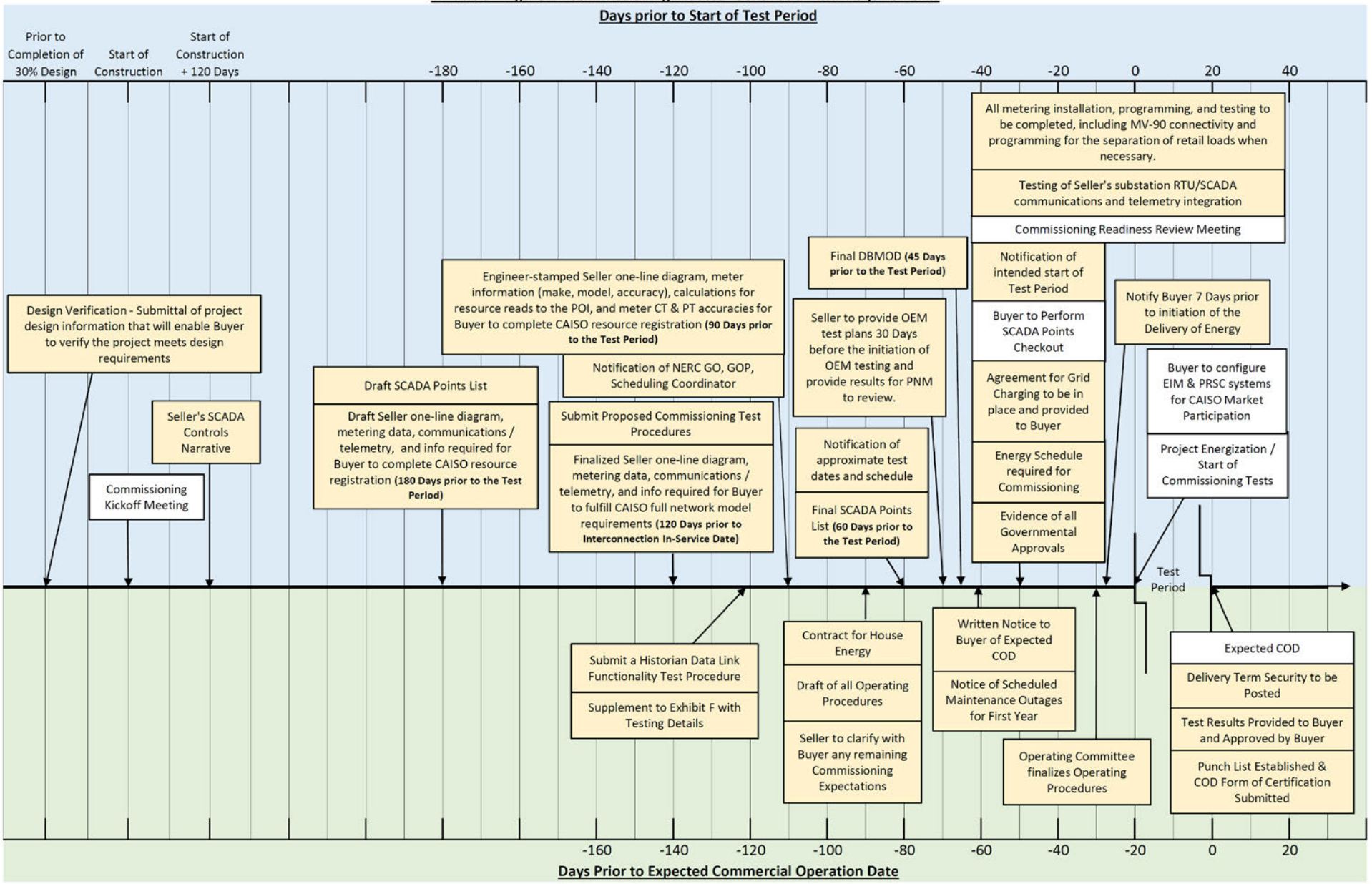
Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1 (Table 2 to prevail in any inconsistency with Figure 1):

*Table 2: Pre-Commissioning Requirements*

| Requirement | Description | Responsible Party | Contributor(s) | Timeline |
|---|---|---|---|---|
| **Design Verification** | Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving ESA obligations, including metering, etc. | **Seller** | Generation Engineering | After completion of 30% design phase of project |
| **Seller's SCADA Controls Narrative** | Controls narrative detailing items related to SCADA and telemetry planning. | **Seller** | PowerOps | 120 Days after Start of Construction |
| | Final DB Mod file delivered to PowerOps. | **Seller** | PowerOps | 45 Days prior to the scheduled Test Period |
| **Seller's Substation Commissioning** | Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing. | **Seller** | Buyer's Project Manager | 30 Days prior to the scheduled Test Period |
| **Metering** | All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Diagram in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary. | **Seller** | PowerOps | 30 Days prior to the scheduled Test Period |
| **CAISO Resource Registration** | Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration. | **Seller** | PowerOps | 180 Days prior to the scheduled Test Period |
| | A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. Delays in Seller's submission to Buyer of this information will likely result in a delay in the transmission interconnection in-service date. | **Seller** | PowerOps | 120 Days prior to transmission interconnection in-service date |
| | Buyer EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps. | **PowerOps** | Seller | |
| | Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter. | **Seller** | PowerOps | No later than 90 Days prior to the scheduled Test Period |
| **Power Operations Engineering Requirements for Commissioning** (Attachment 1) | This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. | **PowerOps** | Seller | SCADA Points Check Out: PowerOps will conduct a checkout 30 Days prior to the beginning of the scheduled Test Period. |
| **Power Operations & WPM Systems configuration** | EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent ESS resources for CAISO market participation. | **PowerOps & WPM IT Support** | Seller | Prior to the beginning of the scheduled Test Period |
| **Agreement for Grid Charging during testing** | During testing/commissioning of facilities, agreements need to be in place with a copy provided to Buyer to allow and plan for grid charging of batteries during the testing process. These agreements will clearly define WPM, GO, GOP or their SC, BA, TO and TOP. | **Seller** | Generation Engineering | Must be complete 30 Days prior to the beginning of the scheduled Test Period. |
| **Operating Procedure** | Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering. | **Seller** | PowerOps | 90 Days prior to the Commercial Operation Date |
| | An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system. | **Seller/Buyer** | Seller / PowerOps / Generation Engineering | 30 Days prior to the Commercial Operation Date |

| Requirement | Description | Responsible Party | Contributor(s) | Timeline |
|---|---|---|---|---|
| **OEM Test Plan** | The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide Buyer with a certificate from an officer certifying that the testing required under the supply agreement with OEM was satisfactorily conducted. | **Seller** | Generation Engineering | All OEM related testing must be completed prior to declaring COD. Seller's officer's certification may be included in the certification required by clause (g) of Commercial Operation. |
| **Test Energy Plan & Schedule** | Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated ESA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans. | **Seller** | Generation Engineering | Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period. |
| **Commissioning Readiness Review Meeting** | Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: Attachment 2: Commissioning Readiness Review | **Generation Engineering** | Seller, PowerOps | 30 Days prior to the beginning of the scheduled Test Period |

**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

**Section 3.3 Commissioning.**

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the ESA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.

- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Buyer Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the ESA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

For Seller's commissioning activities that require Buyer scheduling of energy delivery, Seller's failure to advise Buyer of any change to the planned timing of commissioning activities prior to 48 hours in advance of the change may result in an inability of Seller to conduct testing. Any such delay in commissioning activities as a result of late notification will be to Seller's account.

Seller shall perform Commissioning Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

**Section 3.4 Final Requirements Prior to COD.**

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

## ATTACHMENT 1 TO EXHIBIT O

## BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer 90 Days prior to the beginning of the Test Period:
    a. Nameplate values: MW, MWh, round trip efficiency, etc.
    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.
    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.
    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.
    d. Telemetry for Seller's substation awareness shall include:
        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - ESS total gross values and total net values (in both MW and MVAr)
                - Gross and net values shall be provided for each resource registered with CAISO
            - Point of Delivery values – MW, MVAr
            - AGC setpoints for ESS and voltage setpoint. As well as the feedback for those setpoints.
            - Total ESS cycle count
            - Total ESS State of Charge (SOC) in both percent and MWH
            - Total real power target
            - Total full charge energy
            - Total nominal energy
            - Total energy Rem full power
            - Total max charge power

e. Meteorology data: Seller shall provide meteorology data (if any) with the provided SCADA points.

3. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

## ATTACHMENT 2 TO EXHIBIT O

## COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. Confirmation that everything is in place to begin testing.
    a. The configuration of the system is stabilized.
    b. All planned preliminary, informal, functional, unit level, subsystem, system, and qualification tests have been conducted with satisfactory results.
    c. Any deficiencies detected in the system have been addressed.
5. The expected result and how might the test evaluation results affect the program.
6. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
7. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and operational testers prior to any test using personnel.
8. The fallback plan should a technical issue or potential showstopper arise during testing.
    a. The test director that will decide if an issue is a showstopper.
9. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

# EXHIBIT P

## FORM OF LENDER CONSENT

## CONSENT AND AGREEMENT

This Consent and Agreement (this "***Consent***") is made and entered into as of ___ _, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

## RECITALS

Star Light Energy Center, LLC ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of a photovoltaic solar electric energy generating facility owned by Seller and located in Valencia County, New Mexico (the "***Project***").

Seller and Buyer have entered into that certain Energy Storage Agreement, dated as of June 6, 2025 (as amended, restated, supplemented or otherwise modified from time to time, the "***ESA***"), relating to the Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the ESA (the "***Pledged ESA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

## AGREEMENTS

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged ESA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged ESA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of solar energy facilities of comparable size to the Project and the ability perform all aspects of the ESA; (d) has agreed in writing to be bound by the ESA and to assume all of Seller's obligations under the ESA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged ESA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets

all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of and after the date of assignment, the Facility Development Security Amount or the Operational Security, as applicable, and (iii) Buyer has not terminated this ESA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged ESA (a "*Subsequent Seller*"), may be substituted for Seller under the ESA and Buyer shall recognize such Subsequent Seller as its counterparty under the ESA and, subject to all rights and remedies of Buyer under the ESA, continue to perform its obligations under the ESA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the ESA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the ESA. The transfer of the ESA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the ESA, Lender may cure such default by the deadline provided therefor in the ESA. Buyer will not terminate the ESA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the ESA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the ESA, (b) with respect to a default under Section 12.1(B)(8) or 22.21(A),(B),(C) or (E) of the Agreement, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the ESA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the ESA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the ESA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Solar Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. ESA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the ESA; provided that notwithstanding the foregoing, Buyer may terminate the ESA without Lender consent due to an uncured Event of Default under the ESA after the expiration of Lender's rights to cure under

Section 4 hereof.

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the ESA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the ESA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the ESA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the ESA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the ESA is attached hereto as *Exhibit A* and the ESA has not been further amended, (v) Buyer is not in default of any of its obligations under the ESA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, Seller is not in default of any of its obligations under the ESA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, there are no material disputes between Buyer and Seller under the ESA, (viii) Buyer has not assigned any interest it has in the ESA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the ESA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the ESA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the ESA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the ESA.

8. Replacement Agreement. If the ESA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the ESA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the ESA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the ESA (other than the bankruptcy of Seller or a transfer of the Solar Project to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure

thereupon and in compliance with this Consent but that was not in compliance with Section 9.2 (Seller Permitted Assignment) of the ESA).

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the ESA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the ESA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

**[BUYER]**

By: _____
Name:_____
Title:_____

**[LENDER]**

By _____
Its _____

ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the ESA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the ESA, as and when required under the ESA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the ESA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the ESA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the ESA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the ESA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the ESA. Seller shall have no rights against Buyer, under the ESA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

## EXHIBIT Q

### Form of Estoppel Certificate

### ESTOPPEL CERTIFICATE

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Energy Storage Agreement, dated as of _____ (the "***ESA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a solar energy generating facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the ESA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the ESA have been duly authorized by all necessary action on the part of Buyer, (ii) the ESA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the ESA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the ESA is attached hereto as *Exhibit A* and the ESA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the ESA, Buyer is not in default of any of its obligations under the ESA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, Seller is not in default of any of its obligations under the ESA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, there are no material disputes between Buyer and Seller under the ESA, (viii) Buyer has not assigned any interest it has in the ESA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the ESA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the ESA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the ESA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the ESA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

[BUYER]

By: _____
Name:_____
Title:_____

Windy Lane Energy Storage Agreement

# PNM Exhibit GBB-7

Is contained in the following 151 pages.

# ENERGY STORAGE AGREEMENT

## WINDY LANE ENERGY STORAGE FACILITY

**by and between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**WINDY LANE ENERGY CENTER, LLC**

**Dated as of June 6, 2025**

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Exhibit O Commissioning and Testing Process

Exhibit P Form of Lender Consent

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# ENERGY STORAGE AGREEMENT

This Energy Storage Agreement, as may be amended from time to time, is entered into this 6th Day of June, 2025 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Windy Lane Energy Center, LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 700 Universe Blvd, Juno Beach, FL 33408. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a "**Party**" and collectively as the "Parties."

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission; and

WHEREAS, Seller desires to develop, design, construct, own and operate an energy storage facility, as further defined herein and in Exhibit A; and

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (as amended from time to time, "**Special Service Contract**"), between Buyer and Greater Kudu LLC. ("**Retail Customer**"), as amended from time to time, Buyer has agreed, by entering into this ESA, to procure the Product from the Project to serve Retail Customer's load; and

WHEREAS, Seller desires to sell and deliver to Buyer the Product (as defined herein) and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

## ARTICLE 1
## Definitions and Rules of Interpretation

1.1 Definitions. The following terms have the meanings set forth herein.

"**Abandonment**" means (a) prior to the Commercial Operation Date, a cessation of work and operations at or in respect of the Project for more than one hundred eighty (180) consecutive Days by Seller or Seller's contractors but only if such cessation is not in accordance with Prudent Utility Practices, caused by a Force Majeure Event or Buyer Event of Default, or is not in accordance with Seller's Project Schedule, or (b) after the Commercial Operation Date, the permanent relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this ESA.

"**AC**" means alternating electric current.

"**Accounting Standards**" has the meaning set forth in Section 22.18.

"**Actual Charge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual Discharge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual System Latency Delay**" has the meaning set forth in Exhibit F.

"**AD/CVD**" means antidumping and/or countervailing duty.

"**Additional Consents**" means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this ESA that are required from any Governmental Authority with respect to the Project.

"**Adjustment Cutoff Date**" means (i) for an Eligible Change in Tariff, the beginning of the Test Period, and (ii) for a Section 45(b) Rate Adjustment, the Expected Commercial Operation Date as may be extended under Section 3.6.

"**Affiliate**" of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity, excluding any Tax Equity Investor. For purposes of this definition, the term "control" (including the terms "controls," "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include NEP, NEOP, NEECH, NEER, and NEE, and their respective direct or indirect subsidiaries.

"**After Tax Basis**" means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment ("**Base Payment**") supplemented by a further payment ("**Additional Payment**") to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

"**AGC**" stands for "**Automatic Generation Control**" and means energy management system equipment that automatically adjusts the quantity of Charging Energy and Discharge Energy of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

"**Ancillary Services**" means operating reserves, frequency regulation, reactive supply, voltage control, frequency response, contingency reserves, and other products associated with the

storage and delivery of Energy, each to the extent that the Project is capable of providing such services in its then-current configuration.

"**Anything of Value**" includes, but is not limited to, cash or a cash equivalent (including "grease," "expediting" or facilitation payments), discounts, rebates, gifts, meals, entertainment, hospitality, use of materials, facilities or equipment, transportation, lodging, or promise of future employment.

"**Applicable Law**" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction over this ESA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"**Back-Up Metering**" has the meaning set forth in Section 5.3(A).

"**Balancing Area Authority**" or "**BAA**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

"**Business Day**" means any Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday on which banks in Albuquerque, New Mexico, are permitted or authorized to close.

"**Buyer**" has the meaning set forth in the Preamble.

"**Buyer Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Buyer in connection with the termination of this ESA, to the extent such costs are not already included in Replacement ESS Costs.

"**Buyer-Requested Performance Tests**" has the meaning set forth in Section 10.5.(D).

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value, plus (c) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. To the extent the total value of the calculation in subpart (b) above is negative, the value used in such subpart (b) will be zero The Buyer Termination Payment shall not include consequential incidental, punitive,

exemplary, indirect, or business interruption damages. For termination occurring before the Commercial Operation Date, the Buyer Termination Payment shall not exceed the Development Security, minus any Delay Damages paid.

"**CAISO**" means the California Independent System Operator, or any successor thereto.

"**CAISO EIM**" means the energy imbalance market operated by CAISO.

"**Change in Law**" means the occurrence, after the Execution Date, of any of the following: (a) the adoption or taking effect of any law, tax law, rule, regulation, order or treaty; (b) any repeal of or other change in any law, tax law, rule, regulation, order or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"**Change of Control**" means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller; provided, in calculating ownership percentages for all purposes of the foregoing:

(A) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity or voting interests in each such intermediate entity; and

(B) ownership interests in Seller owned directly or indirectly by any Lender (including any Tax Equity Investor) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, a Change of Control will not include any direct or indirect transfer of the interests in Seller to NEP; provided that following such transfer the entity that operates the Project is (or contracts with) a Qualified Operator.

"**Charging Energy**" means the amount of Energy supplied by Buyer at Buyer's cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured in MWh by the Electric Metering Devices, accounting for estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Commercial Operation**" means when the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the ESS Reliability Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental Approvals required for Seller to operate the Project in accordance with

Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this ESA; and (h) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

"**Commercial Operation Date**" means the date, determined in accordance with Section 3.10, on which all of the following have occurred: (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10; (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation Month**" means a Month occurring after the Commercial Operation Date.

"**Commercial Operation Notice**" has the meaning set forth in Section 3.10.

"**Commercial Operation Year**" means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

"**Commissioning Kickoff Meeting**" has the meaning set forth in Section 3.1 of Exhibit O.

"**Commissioning Test**" means the Initial ESS Unit Capabilities testing detailed in Exhibit F required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

"**Commissioning Readiness Review Meeting**" has the meaning set forth in Exhibit O.

"**Commissioning Tests**" has the meaning set forth in Section 10.2, as further defined in Exhibit F.

"**Confidential Information**" has the meaning set forth in Section 22.14(C).

"**Contract Value**" means the sum of the present values of the ESS Payments for each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination), which annual amount is equal to (a) the quantity of ESS Capacity expected to be made available during such Commercial Operation Year (or portion

thereof) *times* (b) the ESS Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Counteracting Savings Notice**" has the meaning set forth in Section 3.17(D).

"**Creditworthy**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Data Breach**" has the meaning set forth in Section 22.14(F).

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

"**Default Rate**" has the meaning set forth in Section 9.4.

"**Defaulting Party**" means the Party with respect to which an Event of Default under Article 12 has occurred.

"**Delay Damages**" has the meaning set forth in Section 3.7.

"**Delayed ESS Capacity**" has the meaning set forth in Section 3.7.

"**Delivery Term**" has the meaning set forth in Section 7.1.

"**Delivery Term Security**" has the meaning set forth in Section 19.1.

"**Development Security**" has the meaning set forth in Section 19.1.

"**Discharge Energy**" means Energy discharged from the ESS and delivered to Buyer at the Point of Delivery, as measured in MWh by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties.

"**Disclosing Party**" has the meaning set forth in Section 22.14(A).

"**Dispute Notice**" has the meaning set forth in Section 13.8.

"**Disputing Party**" has the meaning set forth in Section 9.5(A).

"**Dollars**" means the lawful currency of the United States of America.

"**Downgrade Event**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is not as

follows: (a) "Baa2" or higher by Moody's, (b) "BBB" or higher by S&P, and (c) "BBB" or higher by Fitch.

"**Early Termination Date**" has the meaning set forth in Section 12.4.

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission System as set forth in Appendix A of the Interconnection Agreement.

"**Electric Metering Device(s)**" means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharge Energy. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering, including the metering current transformers and the metering voltage transformers.

"**Eligible Change in Tariff**" means any change in Applicable Law, new interpretation of existing Applicable Law or action by a Governmental Authority that (a) imposes on Seller or Seller's Affiliates with respect to the importation of Imported Equipment into the United States any duty (including AD/CVD), tariff, import tax, or other similar import fee or cost that becomes effective after, or the enforcement of which commences after, the Threshold Date, or (b) increases the applicable rate of any of the foregoing which becomes effective after the Threshold Date, to the extent affecting Imported Equipment.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any Transmission Provider's Transmission System condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller's breach of its Interconnection Agreement with the Transmission Provider.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer's dispatch instructions and subject to the terms and conditions of this ESA.

"**Energy Storage System**" or "**ESS**" means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to receive, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's charging, discharging, delivery, or storage of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air

quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include (A) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States Environmental Protection Agency or other governmental agencies, (B) any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act, (C) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, (D) credits, benefits or allowances resulting from the compliance of the Project or Project Energy with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "**UNFCCC**") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes include all RECs, any and all aspects of a REC, and the exclusive right to claim the additionality, or "but for cause", of such Projects' development and commercial operation, (E) all WREGIS Certificates as defined by the WREGIS Operating Rules and (F) those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project's delivery or storage of electricity. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; (iii) any Energy, reliability, or other power attributes from the Project, (iv) matters designated by Buyer as sources of liability, and (v) any adverse wildlife or environmental impacts.

"**Environmental Contamination**" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

"**Equivalent Full Cycle**" means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial

charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

"**ESA**" means this Energy Storage Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"**ESS Capacity**" means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for four (4) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Payment Rate**" means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

"**ESS Capacity Shortfall Damages**" has the meaning set forth in Section 3.8.

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Non-Performance Liquidated Damages**" has the meaning set forth in Section 3.13.

"**ESS Operating Restrictions**" means the operating restrictions of the ESS set forth in Exhibit L.

"**ESS Response Delay**" has the meaning set forth in Exhibit F.

"**ESS Response Delay Damages**" has the meaning set forth in Section 3.13(B).

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the Primary Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Unit Capabilities**" has the meaning set forth in Section 3.12.

"**Event of Default**" means a Seller Event of Default as set forth in Section 12.1 or a Buyer Event of Default as set forth in Section 12.2, each after the passage of applicable notice and cure periods, if any.

"**Excused Delay**" means any of the following: (a) Force Majeure, (b) Interconnection Delay, or (c) an Import Restraint, as provided in Section 3.17, to the extent in each case (i) not caused by an act or omission of Seller, (ii) occurring despite Seller's exercise of Prudent Utility Practices, (iii) not reasonably foreseeable, and (iv) beyond the reasonable control of, and not caused by the negligence or lack of due diligence of, Seller or its contractors or suppliers.

"**Execution Date**" has the meaning set forth in the Preamble.

"**Expected Commercial Operation Date**" has the meaning set forth in Section 3.1.

"**Express Contingency Notice**" has the meaning set forth in Section 3.17.

"**Express Contingency Termination Payment**" means a termination amount equal to (i) one million dollars ($1,000,000) for a termination occurring pursuant to an Express Contingency Notice given on or before August 31, 2025 (regardless of when such termination occurs), or (ii) thirty-seven and one-half percent (37.5%) of the Development Security for a termination occurring pursuant to an Express Contingency Notice given at any other time.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**Fitch**" means Fitch Ratings Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

"**Force Majeure Event**" has the meaning set forth in Section 14.1.

"**Frequency Response Capability**" means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on the Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date.

"**GAAP**" has the meaning set forth in Section 22.18.

"**Government Official**" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

"**Governmental Approval**" means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this ESA or the procurement pursuant to this ESA of Product or any component thereof, and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission,

approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

"**Governmental Authority**" means any federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"**Governmental Charges**" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product, either directly or indirectly.

"**Gross Receipts Taxes**" means any New Mexico state and local sales taxes, gross receipts taxes and similar taxes and charges.

"**Guaranteed Charge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed Discharge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed ESS Capacity**" has the meaning set forth in Section 3.12 and shall be valid for the full duration of the ESA with no allowance for degradation.

"**Guaranteed ESS Roundtrip Efficiency**" has the meaning set forth in Section 3.12.

"**Guaranteed PMAX**" has the meaning set forth in Section 3.12.

"**Guaranteed Start Date**" has the meaning set forth in Section 3.1.

"**Guaranteed System Latency**" means the guaranteed time measured between when the control signal is received and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as specified in Section 3.12.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" means energy consumed by the ESS while the ESS is not charging or discharging, as well as energy consumed by ESS ancillaries not directly involved in the control, receipt, storage, or discharge of energy.

"**Imported Equipment**" means battery systems, batteries, inverters, step-up transformers, and structures (including towers and racking) intended to be imported into the United States from foreign destinations for the Project.

"**Import Restraint**" means any withhold release order or other law, rule, or regulation, including the Uyghur Forced Labor Prevention Act, or any action of a Governmental Authority under any such order, law, rule, or regulation, that imposes additional waiting time for Seller to receive Imported Equipment from foreign destinations, or prevents or delays the import or release of any Imported Equipment into the United States.

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended from time to time.

**"Interconnection Delay"** means the Transmission Provider's delay of the In-Service Date (as defined in the Interconnection Agreement) beyond the schedule set forth in the Interconnection Agreement in completing construction of the Interconnection Facilities or upgrades to the Transmission Provider's Transmission System related to, and required pursuant to the Interconnection Agreement for, the interconnection of the Project, but only to the extent that such delay is not caused by or attributable to Seller's breach of the Interconnection Agreement or any other acts or omissions of Seller not in keeping with Prudent Utility Practices, including Seller's failure to complete its obligations under the Interconnection Agreement as needed to ensure timely completion and operation of such Interconnection Facilities.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities, as defined and set forth in the Interconnection Agreement.

"**Internal Revenue Code**" means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

"**Issuer Minimum Requirements**" has the meaning set forth in Section 19.2.

"**ITC(s)**" means the investment tax credits established pursuant to Section 48 or Section 48E of the Internal Revenue Code, as such law may be amended or superseded (in whole or in part) from time to time, measured in Dollars.

"**kW**" means one or more kilowatts AC of electricity, as the context requires.

"**kWh**" means kilowatt hour AC.

"**Lender(s)**" means any and all Persons other than an Affiliate of Seller (a) lending money or extending credit (including any financing lease, monetization of Tax Benefits, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or to an Affiliate

of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing (including tax equity bridge financing), credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) for any capital improvement or replacement related to the Project; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

"**Letter of Credit**" means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

"**Licensed Professional Engineer**" means an independent, professional engineer that is reasonably acceptable to Buyer, licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

"**Local Provider**" has the meaning set forth in Section 1.4.

"**Losses**" has the meaning set forth in Section 20.1(A).

"**Market Event**" has the meaning set forth in Section 7.4(B).

"**Market Operator**" means (a) CAISO in its capacity as operator of EIM, (b) the operator of the BAA or any other entity performing the market operator function for the BAA, or (c) the operator of any organized day-ahead or intra-hour market for a region that includes the Transmission Provider's Transmission System.

"**Maximum State of Charge**" means the relative SOC above which the battery manufacturer recommends that the BESS system not be charged, expressed in percent of Nameplate Energy Capacity.

"**Minimum State of Charge**" means the relative SOC below which the battery manufacturer recommends that the ESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

"**Month**" means a calendar month.

"**Monthly Billing Period**" means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.8.

"**Moody's**" means Moody's Investor Services, Inc. and any successor thereto.

"**Mountain Standard Time**" or "**MST**" means the time that is seven (7) hours behind Coordinated Universal Time (UTC).

"**MPT Failure**" means any failure in the Project's main power transformer or high voltage breakers (a) requiring (x) at least a thirty (30) day outage, and (y) any of (i) replacement of the main power transformer or high voltage breakers, (ii) shipment of the main power transformer or major component thereof, or high voltage breakers or major component thereof, to the manufacturer for repair, or (iii) the on-site repair of the main power transformer or major component thereof, or high voltage breakers or major component thereof, and (b) that is not caused directly or indirectly by Seller's failure to comply with Prudent Utility Practices or Applicable Law or otherwise by the dalliance, delay, lack of prudently maintained spare parts, fault or negligence of or by Seller.

"**Munitions List**" means any list of articles, services or technology designated as defense or military articles, technologies, software or services by any relevant Government Authority, including items listed on the United States Munitions List and/or the Common Military List of the European Union.

"**MW**" means megawatt or one thousand (1,000) kW AC.

"**MWh**" means megawatt hours AC.

"**Nameplate Energy Capacity**" is the maximum amount of energy in MWh, less auxiliary loads, that the ESS can store at 100% state of charge.

"**NEE**" means NextEra Energy, Inc., a Delaware corporation.

"**NEECH**" means NextEra Energy Capital Holdings, Inc., a Delaware corporation.

"**NEER**" means NextEra Energy Resources, LLC, a Delaware limited liability company.

"**NEOP**" means XPLR Infrastructure Operating Partners, LP (f/k/a NextEra Energy Operating Partners, LP), a Delaware limited partnership.

"**NEP**" means XPLR Infrastructure, LP (f/k/a NextEra Energy Partners, LP), a Delaware limited partnership.

"**NERC**" means the North American Electric Reliability Corporation or any successor organization.

"**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in Section 17.3(B).

"**Non-Defaulting Party**" means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

"**Non-Governmental Compliance Obligations**" means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, and self-

regulatory organizations to which the Party is required to have membership and/or submit to jurisdiction in the performance of this ESA.

"**O&M Records**" has the meaning set forth in Section 13.4(A).

"**OATT**" means Open Access Transmission Tariff.

"**Operating Parameters**" has the meaning set forth in Section 10.4(A).

"**Operating Procedures**" means those procedures developed pursuant to Section 10.5.

"**Operating Records**" means all operating logs, blueprints for construction, operating manuals, all warranties on equipment, material engineering drawings, environmental permits, plans, and all documents, including but not limited to supply contracts, studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project. Seller may redact from Operating Records information that Seller reasonably deems commercially sensitive, so long as such redaction does not result in a non-performance by Seller of any of its obligations under this ESA, including audits under Section 22.18 or required to verify Seller's compliance with this ESA and its representations and warranties in Section 15.1, Guaranteed ESS Availability Percentage, and billing and payments.

"**Outage Notice**" has the meaning set forth in Section 7.5(A).

"**Party**" or "**Parties**" has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

"**Person**" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**Point of Contact List**" or "**POC List**" has the meaning set forth in Section 2 of Exhibit O.

"**Point of Delivery**" means, unless otherwise modified in accordance with Section 3.11, the electric system point at which (a) Buyer delivers Charging Energy to Seller, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA.

"**Primary Metering Device(s)**" means the Electric Metering Device used as the primary basis to measure, record, or transmit data relating to the Charging Energy or Discharge Energy associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

"**Product**" means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities from the Project, all of which shall be made available and delivered for Buyer's exclusive use pursuant to the terms of this ESA.

"**Project**" means Seller's energy storage facility, located in De Baca County, New Mexico, with a designed maximum power discharge capability of 68 MW for four (4) hours (272 MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller's equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

"**Project Manager**" has the meaning set forth in Section 10.1(D).

"**Project Schedule**" has the meaning set forth in Section 3.2.

"**Promotional Materials**" has the meaning set forth in Section 22.15.

"**Prudent Utility Practice(s)**" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the battery energy storage industry, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available when needed and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection

requirements, operating requirements of the Interconnection Agreement, voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for battery energy storage systems of the technology provided in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"**Rating Agency**" shall mean S&P or, Moody's or Fitch.

"**Receiving Party**" has the meaning set forth in Section 22.14(A).

"**Receiving Party's Representatives**" has the meaning set forth in Section 22.14(B).

"**Recording**" has the meaning set forth in Section 22.19.

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator, as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Replacement ESS Costs**" means the actual costs incurred by Buyer following an Event of Default that are reasonable and necessary to replace the Product (based upon similar terms, conditions and performance standards outlined in this ESA) which Seller, in accordance with this ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable Product made available and delivered to Buyer's system, as reasonably determined by Buyer or a third party reasonably selected by Buyer. In calculating such amounts, Buyer will follow Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this ESA.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**Retail Customer**" has the meaning set forth in the Recitals.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community, or His Majesty's Treasury.

"**Scheduled Maintenance Outage**" means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this ESA, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" or "**SCC**" has the meaning set forth in Section 3.9.

"**Scope Reporting Rule**" means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 C.F.R. § 229.1500, et seq., as amended from time to time, and, to the extent Buyer or Retail Customer voluntarily elects in its sole discretion to comply therewith, as proposed, or, following the effectiveness thereof, in the final rule form thereof despite being stayed or vacated by appealable judicial action and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Subscriber voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

"**SEC**" has the meaning set forth in Section 22.18.

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Section 45(b) Rate Adjustment**" means any Change in Law that repeals, in whole or in part, the Inflation Reduction Act of 2022, or changes any regulations or administrative guidance implementing the Inflation Reduction Act, in a manner that prevents or limits Seller from claiming or monetizing any ITC.

"**Security**" means Development Security or Delivery Term Security, as applicable.

"**Seller**" has the meaning set forth in the Preamble.

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product as a result of (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, (c) any failure by Buyer to perform a material obligation under this ESA (other than due to a breach by

Seller of its obligations under this ESA), (d) failure of Buyer to have provided sufficient Charging Energy for such discharge, (e) an Emergency Condition, or (f) Buyer's dispatch of the Project which is not in accordance with the Operating Parameters.

"**Seller Forced Outage**" means an unplanned reduction, interruption, or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery and not associated with Seller Excused Hours.

"**Seller Guarantor**" means (i) NEECH, or (ii) a Creditworthy entity that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Parties**" means the following persons or entities connected to the Seller providing services in connection with this Agreement: Affiliates, all entities that it owns or controls, and all of Seller's owners (including Seller's Parent Entity), directors, officers, employees, representatives, and agents.

"**Seller Permitted Transfer**" means:

(1) during periods when NEER or its Affiliate is the direct or indirect owner of more than fifty percent (50%) of the direct or indirect equity and voting interests of Seller (which are not otherwise held by Tax Equity Investors in connection with a Tax Equity Financing), any of the following: (a) a Change of Control of Seller's Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor in connection with a Tax Equity Financing; or (c) a transfer of (i) all or substantially all of the assets of NEER or Seller's Ultimate Parent in a single transaction, (ii) all or substantially all of Seller's Ultimate Parent's renewable energy storage portfolio in a single transaction, or (iii) all or substantially all of NEER's or Seller's Ultimate Parent's energy storage portfolio in a single transaction; provided that following such transfer (A) the entity operating the Project is (or contracts with) a Qualified Operator to operate the Project; (B) such transfer does not have a material adverse effect on the Seller's credit characteristics; and (C) the transferee maintains the applicable Seller Security in accordance with Article 19, and

(2) during periods when NEER or its Affiliate is not the direct or indirect owner of more than fifty percent (50%) of the direct or indirect equity or voting interests of Seller (which are not otherwise held by Tax Equity Investors in connection with a Tax Equity Financing) any of the following: (a) a Change of Control of Seller's Ultimate Parent; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor in connection with a Tax Equity Financing; or (c) a transfer of all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction; provided, that in the case of each of (b) or (c), following such transfer (A) the entity that operates the Project is (or contracts with) a Qualified Operator, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics, and Seller, or such Person, maintains the applicable Seller Security requirements in accordance with Article 19.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be

applicable in the market under a replacement contract covering the same products (i.e., Product) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; *provided* that if (a)(i) is less than (a)(ii), then zero, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary, indirect, or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or in entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this ESA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this ESA.

"**Serial Defect**" means a defect occurring in ten percent (10%) or more of the same parts or components of the Project, that is not attributable to normal wear and tear or reasonably expected lifecycle degradation.

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. This ESA is Site specific and any relocation of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. Adding or subtracting contiguous parcels of property will not be deemed a relocation requiring Buyer consent.

"**Special Service Contract**" has the meaning set forth in the Recitals.

"**State of Charge**" or "**SOC**" means the level of charge as reported by the ESS relative to the Maximum State of Charge.

"**Supplemental Tax Incentive**" means any federal, state, or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any. Supplemental Tax Incentives do not and shall not include any benefits available under the Inflation Reduction Act of 2022 or any regulations promulgated thereunder, which, for the avoidance of doubt, are included in the ESS Payment Rate.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of the ESS.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits, Supplemental Tax Incentives, and any other tax credits that are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses, or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

"**Technical Expert**" means, (i) with respect to an Import Restraint, an independent third-party validation firm that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, or (4) Clean Energy Associates; or (B) mutually agreed upon by both Parties; (ii) with respect to a Counteracting Savings Notice or Express Contingency Notice, an independent third-party validation firm that is: (A) selected by Buyer if a Counteracting Savings Notice, or Seller if a Express Contingency Notice from among (1) Pricewaterhouse Coopers, (2) KPMG, or (3) Ernst & Young; or (B) mutually agreed upon by both Parties.

"**Term**" means the period during which this ESA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and is available to receive

Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

"**Threshold Date**" means (i) for an Eligible Change in Tariff, March 31, 2025, and (ii) for a Section 45(b) Rate Adjustment, the Execution Date.

"**Transmission Provider**" means Public Service Company of New Mexico, Inc., a New Mexico corporation, acting in its transmission function capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means (i) NEE, or, (ii) after any transfer of the direct or indirect equity interests in Seller to NEP, NEE or NEP.

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"**WREGIS**" means the Western Renewable Energy Generation Information System or successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this ESA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this ESA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this ESA, the terms of this ESA shall take precedence.

(D) This ESA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this ESA,

and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this ESA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this ESA. Unless expressly provided otherwise in this ESA, (i) where the ESA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the ESA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this Agreement as a whole.

(H) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(I) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or".

(J) Headings and Section titles are solely for convenience and should not be used to aid in the construction of this Agreement.

(K) All uses of the word "shall" in this ESA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party shall conduct its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this ESA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this ESA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as

purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

(D) Notwithstanding the foregoing, nothing in this ESA shall be construed to limit Seller's rights, claims, causes of action or similar legal abilities against the Transmission Provider, BAA or Market Operator for actions those parties may take from time to time, nor shall this ESA be construed to limit the liability of the Transmission Provider, BAA or Market Operator with respect to Seller.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of House Energy, backfeed power or station service power. Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power separate, bi-directional or consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be able to be financially separated from the metering of Charging and Discharging of the ESS in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this ESA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) House Energy, backfeed power and station service power shall be real time measured by a dedicated electric metering device and shall not be delivered by Seller to Buyer under this ESA.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This ESA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. MST on the date that is the last Day of the twentieth (20th) Commercial Operation Year ("**Term**"), subject to the early termination provisions set forth herein. Applicable provisions of this ESA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The Term shall be unaffected by termination of the Special Services Contract.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms, and as more fully set forth in this ESA, apply to the transaction contemplated by this ESA:

**COMMERCIAL TERMS**

<table>
<tr><td>Buyer: Public Service Company of New Mexico</td><td>Seller: Windy Lane Energy Center, LLC</td></tr>
<tr><td colspan="2">Project: Windy Lane Energy Storage</td></tr>
<tr><td colspan="2">Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of "Point of Delivery."</td></tr>
<tr><td>Contract Term: Twenty (20) Commercial Operation Years</td><td>Product Type: Discharge Energy, Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services</td></tr>
<tr><td colspan="2">ESS Payment Rate: $19.91 per MWh</td></tr>
<tr><td>Day(s) of week: Monday through Sunday, including NERC holidays</td><td>Hours: Hour Ending 0100 MST – Hour Ending 2400 MST, Monday through Sunday</td></tr>
<tr><td colspan="2">Guaranteed Start Date: One Hundred Eighty (180) Days after the Expected Commercial Operation Date</td></tr>
<tr><td colspan="2">Expected Commercial Operation Date: December 1, 2026, subject to extension as set forth in Section 3.6.</td></tr>
</table>

3.2 Project. Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point and the location of the Interconnection Facilities is included in Exhibit A to this ESA. Exhibit A also contains a preliminary indication of the location of the ESS and Solar Facility at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS, Interconnection Facilities, and Solar Facility at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the Interconnection Agreement, and the terms of this ESA. The Project shall meet or exceed the performance specifications of Section 3.4(A) thru Section 3.4(H), and Seller shall ensure that the Project meets or exceeds the standards defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N - Example Interconnection Metering Diagram from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Discharge Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) receive Charging Energy from Buyer and deliver Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of operation over an ambient temperature range of -20$^{o}$F to 110$^{o}$F with relative humidity between 5% and 100%, inclusive;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of disconnection remotely by the System Control Center;

(I) meet or exceed the recommended performance specifications of this Section 3.4.I thru 3.4.K, and as appropriately defined in IEEE Standard 2800-2022 Sections 5, Section 6 and Section 7 at the Point of Delivery, at all times;

(J) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Sections 5 at the Point of Delivery;

(K) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Section 7 at the Point of Delivery, which shall be Category II minimum;

(L) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6 at the Point of Delivery; and

(M) no later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Sections 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as set forth in this ESA, the Commercial Operation Date shall occur no later than the Guaranteed Start Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis, up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Excused Delay that delays construction or commencement of operation of the Project. Seller shall give written notice to Buyer describing any such Excused Delay within five (5) Business Days after becoming aware of its effect on Seller's performance under this ESA. This notice shall provide such detail concerning the Excused Delay as Seller reasonably possesses at the time. The number of Days of such extension shall be calculated from the date on which the Excused Delay begins. If cumulative extensions for Excused Delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this ESA without liability of either Party other than obligations already incurred; *provided*, however, that if cumulative extensions for Excused Delay have delayed the Commercial Operation Date for three hundred sixty-five (365) Days and Buyer has not terminated the ESA, then Seller will have the right to terminate this ESA without liability of either Party other than obligations already incurred. If the Expected Commercial Operation Date has been extended more than one hundred (100) Days due to an Import Restraint, and either Party terminates the ESA in accordance with the foregoing sentence, Seller shall pay to Buyer the Express Contingency Termination Payment, and Buyer shall retain any unpaid Express Contingency Termination Payment from the Development Security.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed ESS Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed ESS Capacity**" is an amount equal to the difference between the Guaranteed ESS Capacity and the Installed ESS Capacity as of the determination date. If the Commercial Operation Date has not occurred before the earlier of (i) the Guaranteed Start Date or (ii) the date on which the accrued Delay Damages equal the Development Security, then Seller shall thereafter have the right for thirty (30) days to terminate this ESA immediately by providing written notice thereof to Buyer, and, other than Seller's payment of the accrued Delay Damages in the amount of the Development Security, no Buyer Termination Payment shall be due.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned, and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date (as such date may be extended by the extension of the Expected Commercial Operation Date pursuant to Section 3.6), then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Fifty Thousand Dollars ($350,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Period. Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generation Operator and will designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M, forty-five (45) Days prior to the beginning of the Test Period. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver (net of losses due to ESS Roundtrip Efficiency) such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharging Energy. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to the commencement of such Test Period. Scheduling for subsequent deliveries of Discharge Energy shall be as set forth in Section 5.1.

3.10 Notice of Commercial Operation. Not less than thirty (30) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such anticipated Commercial Operation Date; provided that such anticipated Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied (the "**Commercial Operation Notice**"). Buyer shall, within fifteen (15) Business Days, in writing either accept Seller's Commercial Operation Notice or reject it based on specifically-identified deficiencies in the criteria in the definition of Commercial Operation Date, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent Commercial Operation Notice is submitted to Buyer. If Buyer rejects the Commercial Operation Notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Charging. The ESS shall be configured to charge using Energy provided by the Buyer from either the electrical grid or the Solar Facility. Seller shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid by the Commercial Operation Date.

3.12 ESS Unit Capabilities. "ESS Unit Capabilities" means all of the following for the ESS, all as measured and determined at the Point of Delivery:

(A) "**Guaranteed PMAX**" of 68 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) "**Guaranteed ESS Capacity**": discharge ESS at Guaranteed PMAX for four (4) consecutive hours; starting at the Maximum State of Charge and ending at the Minimum State of Charge;

(C) **Guaranteed ESS Roundtrip Efficiency** as shown in Exhibit K; Seller shall provide any applicable degradation forecasts applicable to this guarantee;

(D) **Guaranteed Discharge Ramp Rate** of 17 MW per second, measured between 90% State of Charge and 10% State of Charge, representing the maximum rate that the ESS can change its output power;

(E) **Guaranteed Charge Ramp Rate** of 17 MW per second, measured between 10% State of Charge to 90% State of Charge, representing the maximum rate that the ESS can change its input power;

(F) Guaranteed System Latency: <1 second

(G) Guaranteed Frequency Response Capability of Guaranteed PMAX/0.1Hz; and

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5(D). Seller will pay Buyer the following liquidated damages ("**ESS Non-Performance Liquidated Damages**") as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, (b) failure of Buyer to deliver Charging Energy, or (c) a Scheduled Maintenance Outage) or to comply with the requirements of Section 7.4(a).

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Forty Thousand Dollars ($140,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured; and

(B) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, Guaranteed Frequency Response Capability, or Guaranteed System Latency during ESS Unit Capabilities Testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. Provided, however, under no circumstances will ESS Non-Performance Liquidated Damages (other than ESS Response Shortfall Damages) exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year and an aggregate of Two Million Dollars ($2,000,000) over the Term of this ESA.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay Availability Damages as defined in Exhibit H, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

3.15 Guaranteed ESS Roundtrip Efficiency Payment. If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to $100/MWh, *multiplied by* Guaranteed PMAX, *multiplied by* 4 hours *, *multiplied by* (1 - ESS Roundtrip Efficiency/Guaranteed ESS Roundtrip Efficiency)). Seller shall pay such amount following the end of the applicable Commercial Operation Year.

3.16 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof utilized in the Project under this ESA is not prohibited by Applicable Law. Any breach of this Section 3.16 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.16 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.17 Eligible Change in Tariff; Import Restraint

(A) Seller acknowledges that this Section 3.17 is intended for sole use in connection with Retail Customer service under Schedule 36-B and is not precedential for any other contract or agreement with PNM, with Seller or with any other Person. To the extent either (X) one or more Eligible Change in Tariffs or a Section 45(b) Rate Adjustment occur between the Threshold Date and the Adjustment Cutoff Date that Seller is able to document will increase Seller's costs reasonably anticipated over the Term to perform this ESA, or reduce the value (including any limitation on Seller's ability to transfer or otherwise monetize) of any tax credits available under Section 48 or Section 48E of the Internal Revenue Code and/or quantity thereof that Seller reasonably anticipated receiving, by an amount that is equal to at least one and one half percent (1.5%) of either the costs for Seller to build the Facility or the value of the Section 48 or Section 48E tax credits, as applicable, Seller anticipated on the Threshold Date, or (Y) one or more Import Restraints occur between the Execution Date and the Adjustment Cutoff Date that will delay the Expected Commercial Operation Date, Seller may prior to thirty (30) Days after each such Eligible Change in Tariff, Section 45(b) Rate Adjustment, or Import Restraint provide written notice to Buyer of an increase to the ESS Payment Rate to keep Seller whole with respect to the cost increases in the case of an Eligible Change in Tariff or Section 45(b) Rate Adjustment, or delays that Seller reasonably anticipates in the case of an Import Restraint, including replacement supply arrangements and the required extension of the Expected Commercial Operation Date, Guaranteed Start Date, and all other Milestones (in each case, an "**Express Contingency Notice**").

(B) If Buyer disagrees with any aspect of an Express Contingency Notice, Seller shall at its expense retain the Technical Expert. Within fifteen (15) Business Days of Buyer's receipt of the Express Contingency Notice, Buyer and Retail Customer may submit a report to the Technical Expert setting forth questions, countervailing considerations, and other relevant matter, and thereafter the Technical Expert will generate a report respecting the matters set forth in the

Express Contingency Notice, including whether it agrees with the cost increases in the case of an Eligible Change in Tariff or a Section 45(b) Rate Adjustment or schedule changes in the case of an Import Restraint, evidencing the facts alleged by Seller. Such report shall preserve the confidentiality of the information provided by the Parties. Buyer shall have the Report Review Period to review the report from the Technical Expert. Seller shall bear the expenses of the Technical Expert. The Technical Expert's final written determinations shall be binding on the Parties and not subject to dispute.

(C) The ESA shall be automatically amended on the first day following the Report Review Period to incorporate any increase to the ESS Payment Rate or extension to the Expected Commercial Operation Date, Guaranteed Start Date, or other Milestones as set forth in the Express Contingency Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable, except that unless Buyer agrees otherwise in writing: (1) any increase to the ESS Payment Rate pursuant to Section 3.17(A)(X) shall not exceed $3/MWh, and (2) any extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other Milestone pursuant to Section 3.17(A)(Y) shall not exceed one hundred and eighty (180) days; and provided further, that if Seller's Express Contingency Notice sets forth for implementation an increase to the ESS Payment Rate that exceeds the increase limitation in clause (1) or extension of the Expected Commercial Operation Date, Guaranteed Start Date, or any other Milestone that exceeds the extension limitations in clauses (2) above, and Buyer does not accept such excess increase or extension in writing, Seller shall have the right to terminate this ESA and pay to Buyer the Express Contingency Termination Payment, but without further liability of either Buyer or Seller for such termination, upon notice to Buyer, unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security less any unpaid Express Contingency Termination Payment to Seller within fifteen (15) days after such termination.

(D) Counteracting Savings Price Adjustment. If a Change in Law occurs, after the Threshold Date and before the first anniversary of the last adjustment to price or schedule following an Express Contingency Notice that creates savings for Seller, economic benefits for Seller, decreases costs of performance or offsets prior increases in costs to performance set forth in a previous Express Contingency Notice, Buyer may, within ninety (90) days after such Change in Law, provide written notice to Seller of a decrease to the ESS Payment Rate (a "**Counteracting Savings Notice**"). The Parties shall use the process provided in Section 3.17(B) as if the Counteracting Savings Notice was an Express Contingency Notice for an Eligible Change in Tariff, but providing for a reduction in the ESS Payment Rate and for Buyer to at its expense retain the Technical Expert, and Seller will have the Report Review Period to review the report of the Technical Expert. The ESA shall be automatically amended on the first day following the Report Review Period to incorporate any decrease to the ESS Payment Rate as set forth in the Counteracting Savings Notice, subject to any adjustments or corrections in the Technical Expert's final written determinations, as applicable; provided that, unless Seller agrees otherwise in writing, any decrease to the ESS Payment Rate under this Section 3.17(D) shall not exceed the cumulative previous increases to the ESS Payment Rate pursuant to all prior Seller Express Contingency Notices.

ARTICLE 4
AGC

4.1 AGC.

(A) Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability within the Operating Parameters. Total cycles shall not exceed three hundred sixty-five (365) Equivalent Full Cycles in any Commercial Operation Year. Notwithstanding anything in this ESA to the contrary, Seller will have no obligation to dispatch the ESS in response to any dispatch instructions provided by PNM that are not in accordance with the Operating Parameters, and the time period during which non-conforming instructions are given will be considered Seller Excused Hours.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this ESA. Seller shall secure transmission and interconnection service necessary (i) to deliver the Discharge Energy to the Point of Delivery, and (ii) receive Charging Energy from the grid at the Point of Delivery to the ESS, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the Solar Facility, provided that (i) delivery of Energy from the Solar Facility to the Transmission Provider's Transmission System shall take priority over Discharge Energy and the reservation of Ancillary Services capacity at the Point of Delivery; and that, (ii) when Buyer dispatches the ESS for the provision of Ancillary Services in

response to an Emergency Condition, Discharge Energy shall take priority over delivery of Energy from the Solar Facility.

(B) Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy at the Point of Delivery for the Project at the required voltage, including the costs of any associated network upgrades. As between Buyer and Seller under this ESA, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges required to deliver Discharge Energy from and beyond the Point of Delivery. As between Buyer and Seller under this ESA, Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) to deliver Charging Energy to the Point of Delivery, including for the avoidance of doubt during the Test Period.

(E) Seller shall provide to Buyer a finalized one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to provide this information to Buyer in a timely manner.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 a.m. MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers ("**CTs**") and potential transformers ("**PTs**") ("**Back-Up Metering**"), each in an arrangement consistent with the configuration depicted in Exhibit N, or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement conflicts with these provisions, in which case the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this ESA.

The design of the Electric Metering Device system shall be subject to Buyer approval, not to be unreasonably withheld, prior to commencement of construction of the Project. Buyer will, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe following such test. ESS Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous, five minute, fifteen minute, and hourly real and reactive Energy and capacity, if supplied by either the grid, the Solar Facility, or the Project. ESS Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.2 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party shall, at its own expense, inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided*, *however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided*, *however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Secondary Metering, fails to register, or if the measurement made by an Electric Metering Device, or Secondary Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, followed by Secondary Metering to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

## ARTICLE 6
## Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this ESA are subject to satisfaction of the following condition precedent:

(A) As provided in Section 17.3, receipt of NMPRC Approval.

6.2 Notice. As soon as reasonably practicable after satisfaction of the condition precedent specified in Section 6.1 or after confirmation that NMPRC Approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

ARTICLE 7
Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell, make available and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Party's performance is excused by a Force Majeure Event; (b) a Seller Forced Outage is continuing; (c) a Seller Scheduled Maintenance Outage is continuing, or (d) Seller fails to perform and its failure is excused during Seller Excused Hours. At its sole discretion and cost, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will, at its sole cost, have exclusive rights to offer, bid, or otherwise submit the Product for resale in the market and retain and receive any and all related revenues. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this ESA. During the Term, Buyer shall assume all duties as the scheduling coordinator (or equivalent) in any market in which the Project participates or in which the Product is submitted (including the Western Energy Imbalance Market (EIM)), and Buyer shall be responsible for all costs, fees and charges associated with such participation, except for fees or penalties resulting from Seller's breach of this ESA.

7.2 Title and Risk of Loss. Buyer shall be deemed to be in control of all Charging Energy up to delivery, but not including, receipt at the Point of Delivery. Seller shall be deemed to be in control of such Charging Energy from and after such delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy up to the Point of Delivery. Buyer shall be in control of such Discharge Energy from and after Seller's delivery and upon Buyer's receipt at the Point of Delivery. Buyer shall retain title and risk of loss for Charging Energy, Energy stored in the ESS, and Discharge Energy at all times. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery, unless otherwise provided in Section 11.1.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such Future Environmental Attributes is included in the ESS Payment Rate; and (c) such Future Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this ESA. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, or if any change in Applicable Law relating to such Future Environmental Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this ESA in order to deliver the Future Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify

Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. Buyer shall be liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) During the Delivery Term, Buyer shall arrange all scheduling services necessary to receive Discharge Energy from, and deliver Charging Energy to, the Point of Delivery while ensuring compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and/or Force Majeure Events.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point, or Buyer no longer reside in the same market ((i) and (ii) a "**Market Event**") and such Market Event materially changes the interconnection and delivery requirements in this ESA or has a material adverse effect on either Party, the Parties shall negotiate in good faith amendments to this Agreement to facilitate the delivery of Product from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this ESA to the extent possible.

(C) Seller shall provide to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly ESS availability for the next six (6) Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer by 1MW or more, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage in the amount of at least five percent (5%) of the Guaranteed ESS Capacity. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage (i) in the amount of at least five percent (5%) of the Guaranteed ESS Capacity, and (ii) not available to Buyer through the SCADA System. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Discharge Energy, if any, that would be available for delivery at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

## ARTICLE 8
## Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Payment. Subject to the provisions of this ESA, Buyer shall pay Seller an amount equal to the product of (i) ESS Capacity, not to exceed the Guaranteed ESS Capacity, *multiplied by* (ii) the ESS Payment Rate, *multiplied by* (iii) the ESS Available Hours (the "**ESS Payment**"). The ESS Payment also compensates Seller for the associated Future Environmental Attributes and Ancillary Services delivered to Buyer. The ESS Payment includes all Taxes except as provided for in Section 9.7, Section 20.1(B) and Section 21.1.

Example: For a 30-day month, assuming 98% availability:

*ESS Payment = [] MW x 30 days x 24 hours x $[]/MWh x .98*

(B) If Supplemental Tax Incentives become available in connection with the Product, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this ESA. At Buyer's option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this ESA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such incentives.

(C) If Seller or an Affiliate of Seller realizes any Supplemental Tax Incentives with respect to the Project, the value of such Supplemental Tax Incentives actually realized will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental Tax Incentives by Seller or Affiliate of Seller, Seller will remit to Buyer a payment equal to fifty percent (50%) of the value of such Supplemental Tax Incentives.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this ESA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this ESA.

## ARTICLE 9
## Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 3.17. From and after the Commercial Operation Date, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show the ESS Payment, information and calculations, in reasonable detail.

(D) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(F) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this ESA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this ESA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this ESA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all Gross Receipts Taxes charged to Buyer, provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with Applicable Law governing the reporting and payment of Gross Receipts Taxes on those transactions. Buyer shall

reimburse Seller for Gross Receipts Taxes, if any, imposed on Seller's sale of and Buyer's purchase of Product and on Buyer's payment and Seller's receipt of amounts due under this ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this ESA.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees, assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this ESA and implement the provisions in this ESA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, copies of any documentation respecting this ESA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this ESA, including Section 9.9 below, all payments between the Parties under this ESA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this ESA, including damages and other payments that are owed by a Party to the other Party pursuant to this ESA. Undisputed and non-offset portions of

amounts invoiced under this ESA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this ESA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this ESA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 10
## Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement and this ESA. Seller will be solely responsible for obtaining Tax Benefits, and except as provided in Section 3.17, the ESS Payment Rate will not be adjusted to accommodate increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule in Microsoft Project format within thirty (30) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-23-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15$^{th}$ of each month. For cases where the 15$^{th}$ falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by Section 62-23-16 of the New Mexico Public Utility Act. If Seller becomes aware of any critical milestone that will not be achieved by the required date, no later than ten (10) Business Days following the originally scheduled date, Seller must provide Buyer written notice and a recovery plan to achieve such milestone and to minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii)

the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date), a Project Manager reasonably acceptable to Buyer (such acceptance not to be unreasonably withheld, conditioned, or delayed) who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this ESA and any documents ancillary hereto, neither this ESA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith, including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this ESA with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated

with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Such Commissioning Test procedures shall meet or exceed the operability performance requirements defined in IEEE Standard 2800-2022 Sections 4. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least thirty (30) Days' prior notice of the approximate test date and ten (10) Days' prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with twenty-four (24) hours advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements, including executing customary waiver and indemnity agreements, and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this ESA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this ESA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA; and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five minute and real time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees

to operate the Project in such a manner that Discharge Energy delivered by Seller will meet operability performance requirements defined in IEEE Standard 2800-2022, Sections 5 through 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all real time measurement parameters of the Project including individual inverter and system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Sections 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers requirements and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with a ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures.

(A) Seller shall provide Buyer a draft of all Operating Procedures and collaborate with Buyer to finalize mutually agreeable, written Operating Procedures within the timeline defined in Table 2 of Exhibit O. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must operate, maintain and control the Project at all times consistent with the Operating Procedures, the ESA, Prudent Utility Practices, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, and must be continuously available by phone. Seller will make qualified personnel

available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

(B) Seller will prepare detailed test protocols and procedures for all of the Commissioning Tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be unreasonably denied or delayed.

(C) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and provide the results to Buyer. Seller will have sixty (60) Days from the test date to cure any deficiencies in the test.

(D) In the event of a material adverse change in ESS Unit Capabilities, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the following conditions. Buyer-Requested Performance Tests will be conducted in a manner consistent with the annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F.

(1) If the results of a Buyer-Requested Performance Test fail to meet the Guaranteed ESS Unit Capabilities, ESS Non-Performance Liquidated Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(2) Only two (2) Buyer-Requested Performance Tests may be requested per Commercial Operation Year.

(3) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

(E) In addition to the foregoing, Seller may, at its option and expense, perform additional tests ("**Seller-Requested Performance Tests**") in accordance with test protocols and procedures set forth in Exhibit F.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following Commercial Operation Year. Should Buyer desire to change the reporting dates noted above as a result of Buyer's participation in a regional market or program (including the Western Resource Adequacy

Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a non-binding notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each Scheduled Maintenance Outage for the Commercial Operation Year will be subject to reasonable approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Upon the written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Except as allowed under Section 12.1(A)(4), as of the start of the Test Period, Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

ARTICLE 11
Environmental Attributes

11.1 Sale of Environmental Attributes.

(A) Effective from the date on which Seller first makes Product available, to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer no later than fifteen (15) Business Days after the Future Environmental Attributes are available to be transferred in the respective attribute tracking system. Buyer may request that Seller provide Buyer with a reasonable estimate of the incremental costs, if any, that Seller would incur to deliver to Buyer Future Environmental Attributes pursuant to WREGIS or another tracking system or registry, as requested by Buyer. Seller shall provide such reasonable cost estimate to Buyer within thirty (30) days of receipt of Buyer's request. Following Buyer's receipt of Seller's cost estimate, Buyer may thereafter require Seller deliver such Future Environmental Attributes, and Seller shall do so, at Buyer's expense; provided, however, that Buyer may further thereafter request Seller to cease delivery of some or all of such Future Environmental Attributes, and after the effective date of such request, Seller shall cease delivering as requested by Buyer.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes shall include any Future Environmental Attributes that are reserved or "banked" throughout the Term of this ESA, but not used, sold, assigned, or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law. Buyer shall have the exclusive right to transfer Environmental Attributes to Retail Customer, or retain the Environmental Attributes and retire the Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(D) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(E) Seller shall not report in any public communication, or under any program, that any of the Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer or retail Customer. During the Term, Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Environmental Attributes for Buyer to own, hold and manage in Buyer's or Retail Customer's own name and account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Environmental

Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Environmental Attributes, RECs, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy, and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. Seller shall have no duty to search for third-party claims but will have the duty to inquire and investigate as appropriate to support resolution of third-party claims which it has made, or of which it has become aware or have been reported to it by Buyer. To the extent that any such public communication is allowed under Section 13.1, in any public communication concerning the Project, Project Energy or the Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Charging Energy or Discharge Energy, *provided* that no portion of the foregoing is an agreement to affect Seller's ownership of or entitlement to Tax Benefits.

## ARTICLE 12
## Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller enters into an assignment for the benefit of creditors;

(3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller's voluntarily taking advantage of any such law by answer or otherwise;

(4) Except during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date or other date mutually agreed to by the Parties, except as may be extended pursuant to Section 3.6; or

(7) Seller's failure to deliver Environmental Attributes, to the extent deliverable, in accordance with the terms of this ESA on more than three occasions in any rolling thirty-six consecutive month period.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The Delivery Term Security has been fully drawn by Buyer and Seller has not replenished within ten (10) Business Days of written notice of full draw, whether or not Seller is obligated to replenish the Delivery Term Security pursuant to Section 19.1;

(3) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(4) The failure of any Seller Guarantor to be NEECH or Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) After the Commercial Operation Date, (x) the Project fails to achieve ninety percent (90%) of the Guaranteed ESS Capacity during annual performance testing conducted pursuant to Section 10.5(C), provided, that in no case shall such test be performed when major equipment is not operational; and (y) Seller fails to restore ESS Capacity to above ninety percent (90%) of the Guaranteed ESS Capacity referenced in Section 3.12 within one hundred eighty (180) days of such failure;

(6) Seller's failure to make any payment due to Buyer under or in connection with this ESA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this ESA), unless remedied within ten (10) Days of receipt by Seller of written notice of such failure from Buyer;

(7) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice; or

(8) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider, Buyer, or Retail Customer, or from a Force Majeure Event, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including, but not limited to, the Interconnection Agreement) required to make Product available at the Point of Delivery; or

(3) Seller's failure to comply with any other material obligation under this ESA, which would result in a material adverse impact on Buyer; or

(4) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty-five percent (85%) over any twenty-four (24) consecutive Months during the Term excepting to the extent due to an MPT Failure (which exception may apply only once during the Term), provided that the 30-Day cure period indicated in Section 12.1(C) does not apply and Seller may cure by remediating the cause of the shortfall of Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the eighty-five percent (85%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of an MPT Failure of the steps that Seller is taking to remediate the failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving such MPT Failure.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this ESA, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; *provided*, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise; or

(4) Buyer's assignment of this ESA except as permitted in accordance with Article 18.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this ESA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Buyer's actual fraud, waste, tampering with Seller-owned facilities or other material misrepresentation or misconduct in connection with this ESA or the operation of the Project;

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(3) Any representation or warranty made by Buyer in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term, if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an uncured Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this ESA from the Defaulting Party as set forth in Section 12.3(B); (ii) exercise its rights pursuant to Section 12.5; (iii) suspend performance; (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security; and (v) exercise its rights to terminate this ESA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled, subject to the limitation on damages set forth in Section 12.7, to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date. If Seller is the Defaulting Party, the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include the Replacement ESS Costs notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which may include Future Environmental Attributes.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment, plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. Seller shall calculate the Seller Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(B). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of any actual or threatened breach of any material performance obligation of the other Party under this ESA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this ESA shall be cumulative of and shall be in addition to every other right or remedy provided for in this ESA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, either Party may send the other Party an invoice for such damages or other amounts as are due to the Party providing the invoice at such

time from the other Party under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this ESA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE 13
## Contract Administration and Notices

13.1 Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered, mailed via overnight service with signature required upon receipt, or delivered via means of electronic transmission (with receipt confirmed) to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this ESA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this ESA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this ESA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All

records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, dispatch and scheduled Discharge Energy delivered, Charging Energy received, and House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records, subject to such Party's ability to redact information it reasonably deems competitively sensitive; *provided*, such redactions do not prohibit a Party's ability to exercise its rights and perform its obligations under this ESA.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) quarterly construction progress reports until the start of construction and monthly thereafter, in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B); and (ii) reports of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this ESA; and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this ESA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such

Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; and (iv) does not, except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this ESA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the incurred expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this ESA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this ESA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature

of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

## ARTICLE 14
## Force Majeure

14.1 Definition of Force Majeure Event.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises after the Execution Date that (i) is not reasonably foreseeable, (ii) is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, (iii) cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and (iv) adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic, including COVID-19, shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this ESA is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory

approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws or material or serial defects; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of three hundred sixty-five (365) Days from its inception, either Party may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this ESA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this ESA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days after the Party becomes aware of the Force Majeure Event; *provided* that notice given after such ten (10) Business Day period is effective only for the period after the notice is given, of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance

shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event prevents the ability of either Buyer or the Transmission Provider to accept Discharge Energy from the Project, deliver Charging Energy to the Project, or otherwise prevents the ability of the ESS to deliver Product, then the hours during which the Force Majeure Event occurs shall be Seller Excused Hours and excluded from the payment calculations as set forth in Section 8.1.

## ARTICLE 15
## Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this ESA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA.

(C) The obligations of Seller under this ESA are valid and binding obligations of Seller.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

(J) Seller has not sold, delivered, or transferred the Future Environmental Attributes to any other Person, in whole or in part.

(K) All right, title, and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(L) Subject to Section 7.3, each Future Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 et seq., and Title 17.9.572 NMAC.

(M) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(N) Except as expressly set forth in this ESA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(O) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(P) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this ESA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA.

(C) This ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

## ARTICLE 16
## Insurance

16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers (i) rated at least A- VII by A.M. Best, (ii) rated "A" or better by Standard & Poors, or (iii) that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this ESA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this ESA shall cover occurrences during the Term of this ESA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this ESA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this ESA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer(or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17
## Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the ESA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this ESA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this

Section 17.1 as Confidential Information in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval in connection with (i) the execution and performance of this ESA; (ii) a final order or other regulatory determination from the NMPRC (A) that Buyer may recover the costs; (B) approving revisions to the Special Services Contract; (iii) any waivers as set forth in Buyer's request for approval of this ESA; and (iv) the execution and performance of the additional renewable energy procurement under the Special Service Contract (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to a motion for rehearing or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller, Retail Customer and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this ESA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This ESA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if neither Buyer nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made by Buyer or Retail Customer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this ESA should remain in effect. Upon automatic termination, this ESA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA. If the Parties and Retail Customer are unable

to mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties and Retail Customer conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(3) If the NMPRC, for any reason, has not issued NMPRC Approval of all Requested Actions by December 31, 2025 ("**Regulatory End Date**"), then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

## ARTICLE 18
## Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this ESA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) a collateral assignment to a Lender, in accordance with Section 18.6, (ii) any assignment or transfer of this ESA by Seller to an Affiliate of Seller; or (iii) any assignment or transfer of this ESA by Seller to a Person succeeding

to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (ii) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) except in the case of an assignment or transfer pursuant to clause (ii), delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA.

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this ESA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this ESA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this ESA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this ESA with the Affiliate as if such Person had been named under this ESA; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this ESA made without fulfilling the requirements of this ESA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this ESA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this ESA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this ESA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this ESA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this ESA to Seller's Lenders pursuant to Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this ESA.

## ARTICLE 19
## Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed ESS Capacity ("**Development Security"**) within the earlier of (a) ninety (90) Days after the Execution Date and (b) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed ESS Capacity (the "**Delivery Term Security**"). Seller may, at its discretion, convert all or part of the Development Security to Delivery Term Security by written notice to Buyer. Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer, except that the aggregate amount of such replenishment during the Term shall not exceed three times (3x) the Delivery Term Security requirement. Development Security shall not be replenished. Buyer will return the Development Security to Seller in full within fifteen (15) Days after Seller posts Delivery Term Security. Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92$^{nd}$) day after termination of this ESA in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch

of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is NEECH or Creditworthy, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) days of expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this ESA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this ESA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this ESA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of

this ESA, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this ESA.

## ARTICLE 20
## Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the

foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21
## Governmental Charges

21.1 Allocation of Governmental Charges. In the event of any contradiction between this Section 21.1 and Section 9.7, Section 9.7 shall control. In the event of any contradiction between this Section 21.1 and Section 22.2, this Section 21.1 shall control. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer the Product that are imposed prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of the Product that are imposed at and from the taking of the Product by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with

all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

## ARTICLE 22
## Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this ESA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Rate Changes. The terms and conditions and the rates for service specified in this ESA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, neither Party will apply to FERC to change the rates in this ESA pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

22.4 Certain Third Party Beneficiary Rights

(A) In executing this ESA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly provided in Section 22.4(B), nothing in this ESA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this ESA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this ESA, Retail Customer is an express third-party beneficiary to this ESA. The provisions of this ESA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as an express third party beneficiary hereof as if it were a

Party hereto. In addition and without limiting the foregoing, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer notice of a change in the location of the Site;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project;

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the ESA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the ESA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed.

22.5 Relationship of the Parties.

(A) This ESA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this ESA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this ESA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the ESA and their application not adversely affected thereby shall remain in force and effect; *provided, however,* that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this ESA with a view toward effecting the purposes of this ESA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this ESA constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to approval by any Governmental Authority with jurisdiction over this ESA, this ESA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further,* that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further,* that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This ESA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this ESA are for ease of reference only and do not constitute a part of this ESA.

22.12 Counterparts. This ESA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this ESA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this ESA shall be brought in the United States District Court for the District of New Mexico; the parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS ESA. **EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH**

**ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, technical advisors, contractors, consultants, legal counsel, and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this ESA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this ESA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this ESA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this ESA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this ESA that relates solely to this ESA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this ESA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information to make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall notify Buyer as soon as reasonably practicable of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("**Data Breach**") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access.

(A) Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this ESA and the Environmental Attributes that are generated under this ESA and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA and the creation, sale or retirement of such Future Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain (if such rights are held by someone other than Seller) and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project (which reasonableness may vary according to the notice Seller receives from Buyer) for the purposes of furthering the creation, production, and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this ESA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this ESA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Should Seller have a dedicated operations and maintenance or other building associated with the Project, signage will be included inside such building(s), the size and style of which will be reasonably and mutually agreed between Seller and Buyer after consultation with Retail Customer, displaying information about Retail Customer's affiliation with the Project and Retail Customer's logo. In addition, Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any

of its obligations or liability under this ESA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable, and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this ESA constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this ESA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the ESA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the following provisions apply for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller

or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8-K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use commercially reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel, is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

(F) Seller shall provide Buyer all such information as Buyer shall reasonably request for Buyer or Retail Customer compliance with the Scope Reporting Rule.

22.19 Telephone Recording. Each Party to this ESA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the

Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this ESA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this ESA and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this ESA in accordance with Section 12.4. In connection with the performance of this ESA and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses incurred by Seller, Seller Parties or Contractors are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will promptly report to Buyer in writing of any actual or threatened breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Government Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Facility or the Site, Seller represents and warrants that, to the best of its knowledge, none of its Contractors has engaged in offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. Seller will require (through contract or other obligation) and enforce Contractors expressly agreement to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and Buyer shall have the right to withhold further payments after Buyer has provided Seller notice of such audit without any liability to Seller until Buyer is reasonably satisfied that no breach has occurred; provided that Buyer shall make such payments with interest at the Default Rate if Buyer is reasonably satisfied that no breach has occurred. If the ESA is terminated

pursuant to an Event of Default under Section 12.1(A)(10), Buyer shall have no obligation to make further payments hereunder.

22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party or its Contractors to be responsible for, exporting and importing any equipment or property (to the extent such equipment or property are exported or imported) that Seller, Seller Parties or Seller's Contractors, as applicable, import with respect to the Facility, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority with respect to exporting or importing such equipment or property.

(B) In no instance may Seller, Seller Parties or Seller's Contractors list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List (at the time provided), or (ii) originated, offloaded or transferred to a different ship or carrier in any Sanctioned Territory (at the time of origination, offloading or transfer, as applicable).

(D) At Buyer's written request, Seller shall provide to Buyer all Trade Control related documentation in Seller's possession which Seller may share in compliance with confidentiality obligations, as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with), or respond to enquiries from any Governmental Authority in relation to, Trade Controls; provided that, if such Trade Control related documentation is in possession of Seller's Contractors but not Seller, Seller shall make commercially reasonable efforts to request from such Contractor the required documentation and, to the extent required, permission to disclose such documentation to Buyer.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and that as of the Execution Date none of its Contractors is a Sanctioned Person and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not directly engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this ESA, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure that its Contractors expressly agree in writing to Trade Controls undertakings, representations, and warranties substantially similar to this this Section 22.21 (Trade Controls) with respect to any equipment that such Contractor imports into the United States or such Contractor's work in connection with this Agreement; provided that, a failure by Seller solely to comply with its obligations under this clause (g) shall not be a default under this Agreement.

(H) Notice. If Seller becomes aware that (a) any breach of the terms of If Seller becomes aware that (a) any breach of the terms of this Section 22.21 has occurred or is likely to occur, or (b) Seller, any Seller Party, or any Contractor has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days thereof.

(I) Excusal. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal under Sanctions; provided that if such excused performance (including making any payments) becomes no longer illegal under Sanctions, Buyer shall perform such obligation (including making of any previously excused payment).

(J) Subject to Section 12.1(B)(8) and the cure period therein, Buyer may terminate this ESA, within five (5) Business Days and without further liability, upon written notice to the Seller, if the Seller has breached Section 22.21(A), (B), (C), or (E), in which case, the Buyer shall have no obligation to make further payments to Seller to the extent that making such payments would be illegal under Sanctions.

22.22 Change in Law. If a Change in Law occurs that makes it impossible or illegal for a Party to perform an obligation under this ESA lawfully, the Parties shall negotiate in good faith to amend this ESA within sixty (60) Days after the affected Party provides written notice to the other Party with respect to such Change in Law as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties as of the Effective Date; provided, however, that a waiver by the Party owed the illegal or impossible performance of the obligation to perform shall restore the allocation without need for an amendment or further action of the Parties. In the absence of such a waiver, if the Parties fail to enter such an amendment by the end of such sixty (60) Day period, the Parties shall refer the issue for dispute resolution under Section 13.8.

*[Signature page(s) follow]*

IN WITNESS WHEREOF, the Parties have caused this ESA to be duly executed as of the date first above written. This ESA shall not become effective as to either Party unless and until executed by both Parties

PUBLIC SERVICE COMPANY OF NEW MEXICO

By _____

Name Omni Warner

Title Vice President

WINDY LANE ENERGY CENTER, LLC

By: _____

Name: Anthony Pedroni

Title. Vice President

Legal Review Completed

[Signature Page to Energy Storage Agreement]

**EXHIBIT A**
(to Energy Storage Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: Windy Lane Energy Center, LLC
2. Location: Co-located with existing New Mexico Wind Energy Center and Casa Mesa Wind in De Baca County, New Mexico

   Latitude: 34°35'33.31"N Longitude: 104° 1'53.08"W
3. Owner (if different from Seller): N/A
4. Operator: Seller or Affiliate thereof
5. Equipment/Fuel:
   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Energy Storage
   b. Total number of units at the Project: Approximately 72 energy storage containers
   c. Total nameplate capacity (AC): 68 MW
   d. Total capacity at point of delivery: 68 MW
   e. Additional technology-specific information: Approximately 25 inverters
6. Project Schedule:

| Key Milestone | Date |
|---|---|
| LGIA Execution | 5/31/2025 |
| Major Equipment Supply Agreements Executed | 1/15/2026 |
| Discretionary Permits | 11/1/2025 |
| Close Financing | 12/1/2026 |
| 30% Design Complete | 6/15/2025 |
| Start of Project Construction | 11/15/2025 |
| First Major Equipment Delivered to Site | 6/2026 |
| Interconnection In-Service Date | 9/1/2026 |
| Commissioning Start Date | 11/2026 |
| Expected Commercial Operation | 12/1/2026 |
| Guaranteed Start Date | Defined in 3.1 |

7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the ESA.

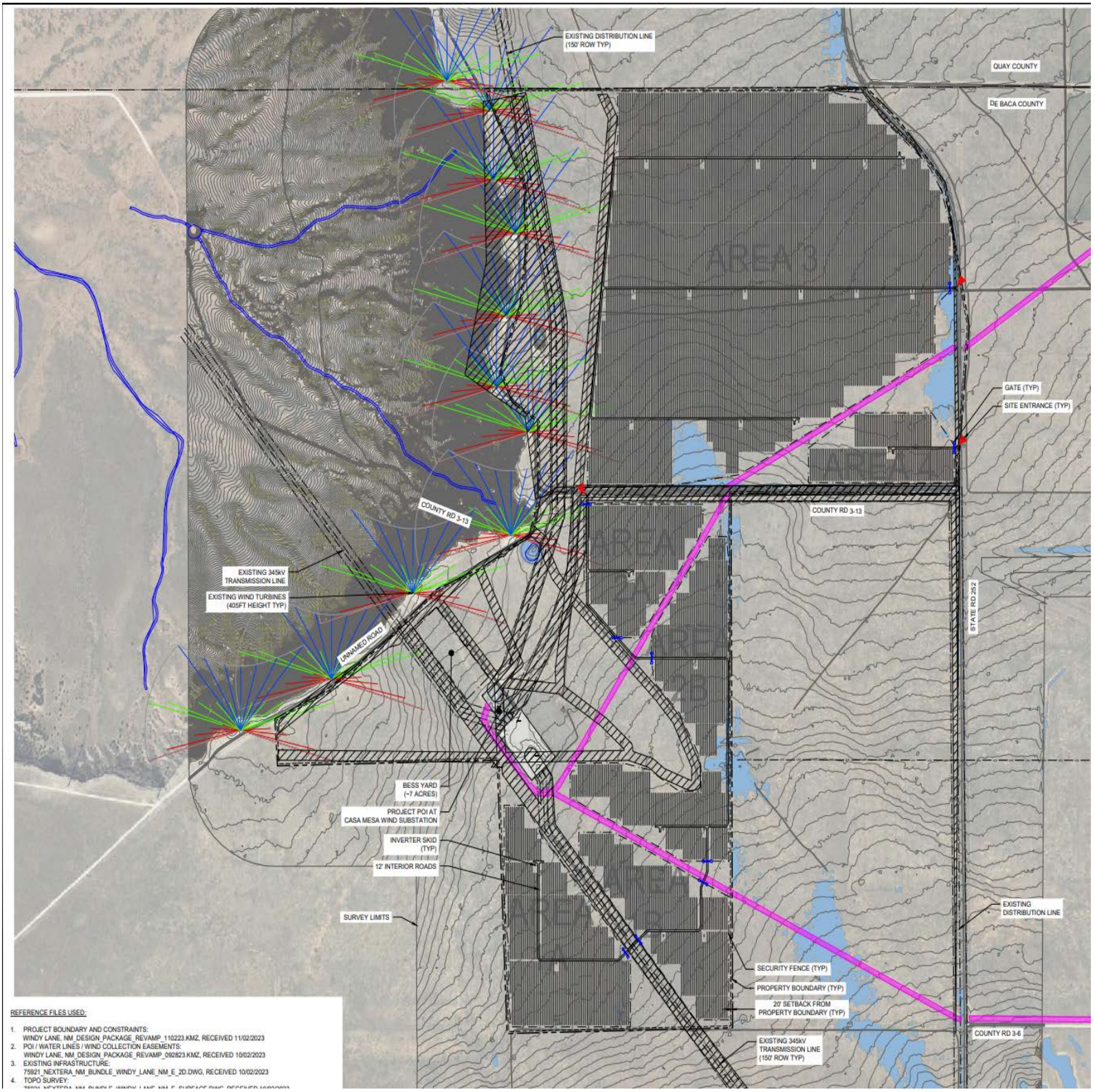


**EXHIBIT B**
(to Energy Storage Agreement)

**ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram of the Project, which will be provided by Seller within ninety (90) Days of the Execution Date. The diagrams indicate the following:

   - Interconnection Facilities;
   - the network upgrades;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
   - communications and telemetry configuration with associated redundancy;
   - the House Energy power source and associated dedicated electric meter; and
   - redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is PNM's 345kV Taiban Switchyard.

**EXHIBIT C**
(to Energy Storage Agreement)

**DESCRIPTION OF SITE**

Southwest Quarter (SW¼), South Half of the Northeast Quarter (S½NE¼), South Half of the Northwest Quarter (S½NW¼), Southeast Quarter (SE¼), and Lots 1, 2, 3, and 4, all in Section 5; AND the West Half (W½) of Section 8; AND the Northeast Quarter (NE¼) of Section 7, all in Township 4 North, Range 28 East, N.M.P.M., DeBaca County, New Mexico.

containing 827 acres, more or less.

**EXHIBIT D**
(to Energy Storage Agreement)

**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**Notices:**

**Delivery Address:**

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

**Invoices:**

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:
PNMEAM@pnmresources.com

**Scheduling:**

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

**Payments:**

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

**Wire Transfer:**

Wells Fargo Bank
ABA# [●]
Albuquerque, New Mexico
ME Whsle Pwr Depository: [redacted]
Attn: EA-Wholesale Power Marketing

**Contract Manager:**

**Windy Lane Energy Center, LLC**

**All Notices/Invoices:**

**Delivery Address:**

WINDY LANE ENERGY CENTER, LLC
Attn: Business Management
700 Universe Blvd.
Juno Beach, FL 33408
Phone: 561-801-8079
Email: DL-NEXTERA-BM-NEWMEXICO@nexteraenergy.com

With copy to:
NextEra Energy Resources, LLC
Attn: General Counsel
700 Universe Blvd.
Juno Beach, FL 33408
Email: NEER-General-Counsel@nexteraenergy.com

**Wire Transfer:**

Bank of America
ABA: [redacted]
Acct: [redacted]

**With additional Notice of an Event of Default, termination and other legal notices to:**

NextEra Energy Resources, LLC
Attn: Business Management
700 Universe Blvd.
Juno Beach, FL 33408
Phone:561-801-8079
Email:DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com

Public Service Company of New Mexico
Attention: Eric Meadors
2401 Aztec Dr. NE
Albuquerque, NM 87107
Telephone: (505) 241-2179
Email: eric.meadors@txnm.com

**With additional Notice of an Event of Default, termination and other legal notices to:**

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

**With a copy to:**

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

**Project Manager:**

NextEra Energy Resources, LLC
Attn: Ashley Sgaliardich – Project Director
700 Universe Blvd.
Juno Beach, FL 33408
Phone: 561-876-5215
Email:Ashley.sgaliardich@nexterenergy.com

**EXHIBIT E**
(to Energy Storage Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

| PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION | GOVERNMENTAL ENTITY |
|---|---|
| Access/Driveway Permit | New Mexico Department of Transportation (NMDOT)/De Baca County |
| Structural Building Permit | New Mexico Construction Industries Division (NMCID) |
| Electrical Building Permit | New Mexico Construction Industries Division (NMCID) |

NOTE: Final actual permit requirements may vary from the above listings due to Code and Regulatory requirements as needed for project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of the Agreement.

**EXHIBIT F**
(to Energy Storage Agreement)

**COMMISSIONING AND ANNUAL TESTS**

All tests described in this Exhibit F will be conducted in accordance with equipment manufacturers' recommendations and current test procedures, including performance adjustments based upon ambient conditions. ESS Reliability Testing and Operational Reliability Testing may be run simultaneously.

**Commissioning Tests**

A. SCADA Functionality Test (or equivalent)
B. Automatic Generation Control (AGC) Functionality Test
C. Voltage Setpoint Functionality Test
D. SCADA Historian Data Link Functionality Tests
E. ESS Reliability Tests

**Commissioning and Annual Performance Tests**

A. ESS Unit Capabilities Tests, including:
    a. ESS Capacity Test including ESS Roundtrip Efficiency Determination
    b. ESS Response Delay Test
    c. Frequency Response Capability Test

**Commissioning Tests**

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

**A. SCADA Functionality Test**

**Purpose:**
This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering (POE). This test must be performed prior to energization of the Energy Storage System (ESS).

**Procedure:**
Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall then contact Buyer's POE Team 4-6 weeks in advance to submit a database modification request (DBMOD) and request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. Testing phases 1-3 (below) require only POE contacts, but phase 4 will also require Buyer's Operator support.

The test shall include, but is not limited to, the following verification:

1) Status points
   - Verify POE is receiving the intended state of Seller's switches and breakers
   - Verify POE can see and change the value of states of Seller's switches and breakers
   - Verify the functionality of the local/remote mode indication status

2) Analog points
   - Verify POE is receiving the intended value
   - Verify POE receives a changed value
   - Verify values have the correct scaling

3) Accumulator points (as applicable)
   - Verify POE is receiving an inserted value
   - Seller reverts to original value then verifies POE receives the new value
   - Verify values have the correct scaling

4) Control points (as applicable)
   - Verify the functionality of all breakers to be controlled by Buyer's POE
   - Verify the functionality of all switches to be controlled by Buyer's POE
   - Verify POE can control all reclosers
   - Verify on-site personnel have capability of changing states and values
   - Verify the functionality of all Setpoints
   - Verify the functionality of all feedback points

Completion of this test will be acknowledged verbally between Buyer's personnel and the stakeholders involved and confirmed thereafter in writing (email is acceptable). This test must be repeated for changes to the states table(s) and/or list of points.

**B. Automatic Generation Control (AGC) Functionality Test**

Purpose:
This test will demonstrate the ability of the ESS to synch to AGC. This test will occur after the ESS system has energized.

System starting state:
The ESS will be in the on-line state with a SOC between [●]% and [●]% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure:
Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team 4-6 weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour Operational activities.

**Remote Mode Testing**

Seller will set the ESS to REMOTE mode, and verify the unit accepts AGC.

- Operator will send a setpoint to the unit
- Validate the ESS unit responds to the setpoint
- Operator will send a setpoint above and/or below ESS operation limits
    - Validate the ESS sends alarms
    - Validate the ESS unit does not attempt to charge/discharge to the value sent

Buyer's Operator will set the AGC Control mode to MARKET:
- Validate the ESS unit responds to a DOT from CAISO

Buyer's Operator change the ESS to MARKET in AGC
- Validate the ESS unit changes the control mode
- Validate the ESS unit follows gross MW requested in Planner Pro

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG
- Hold for up to 10 minutes
- Validate the ESS unit responds to ACE of +/- 10 MW

**Local Mode Testing**
On-site personnel change the ESS to LOCAL mode
- Validate the ESS unit changes from REMOTE to LOCAL mode
- Validate the ESS unit follows gross MW requested on-site
- Validate the ESS unit does not respond to setpoint changes

System end state:
The ESS will be in the on-line state and with control mode set to LOCAL.

**C. Voltage Setpoint Functionality Test**

*Test procedures to be agreed upon at a later date, consistent with the timeline set forth in Section 10.2 of the ESA and ESS manufacturer's then-current operating and testing*

*requirements*

**D. SCADA Historian Data Link Functionality Test**

The SCADA historian data link will facilitate transfer of real time SCADA points which are used for monitoring and analysis, but not necessarily for ESS control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party) and assist as necessary to set up the SCADA historian data link.

Seller shall prepare and submit to Buyer a SCADA historian data link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA historian data link Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA historian data link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

**E. ESS Reliability Testing**

**E.1 Cycling Reliability**

A. Purpose of Test

To demonstrate the ability of the ESS to reliably perform full charging and discharging cycles.

B. Test Procedure

The cycling reliability test shall include the following test elements:

1. the discharging of the ESS from 100% of the Maximum State of Charge to 0% of the Maximum State of Charge followed by;
2. following a prescribed period of "rest" per the OEM guidelines, the charging of the ESS from 0% of the Maximum State of Charge to 100% of the Maximum State of Charge.

C. Test Results

The cycling reliability test shall be satisfied when the ESS successfully performs three (3) full charge and discharge cycles with the ESS control system in auto without any alarms that indicate an adverse condition that impacts system operations below operating specifications/nameplate, faults, trips, or manual intervention required.

**E.2 Operational Reliability**

A. Purpose of Test

To demonstrate the short-term reliability of the ESS.

B. Test Procedure

The ESS shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the ESS remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any material alarms, faults, trips, or manual intervention required.

**Commissioning and Annual Performance Tests**

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the ESA) throughout the term of the ESA.

## F. ESS Unit Capabilities Testing

F.1 ESS CAPACITY TEST

F.1.1 General

The ESS Capacity Test ("**ESS Capacity Test**" or "**ECT**") is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

F.1.2 Requirements Applicable to all ESS Capacity Tests

A. Purpose of Test. Each ECT shall:

(1) verify compliance with the Guaranteed ESS Capacity;

(2) determine the Roundtrip Efficiency (RTE) of the ESS;

B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

(1) discharge time (minutes);

(2) ESS Charging Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy In");

(3) ESS Discharge Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy Out");

(4) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to the Point of Delivery, in MWh ("Point of Delivery Energy Out");

(5) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh ("Point of Delivery Energy In");

C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

D. Test Elements and Sequence. Each ECT shall include the following test elements:

(1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);

(2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

(3) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;

(4) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity;

(5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

(1) General. At all times during an ECT, the ESS shall be operated in

compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section F.1.2.F of these ESS Capacity Test Procedures.

(3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.

(4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.

F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section F.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT,

which report shall include:

(1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for the ESS Electric Meter Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;

(3) The ESS Capacity as determined by the ECT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section F.1.2.F of this ESS Capacity Test Procedure.

H. Supplementary ESS Capacity Test Protocol. No later than ninety (90) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the "Supplementary ESS Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first Four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) Four (4) hours) shall be divided by Four] ([4]) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.

J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$Roundtrip\ Efficiency\ (\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})} \times 100\%$$

F.2 ESS RESPONSE DELAY TEST

**A. Purpose of Test:**

1. Determine the System Charge Latency of the ESS
2. Determine the Charge Ramp Rate of the ESS
3. Determine the System Discharge Latency of the ESS
4. Determine the Discharge Ramp Rate of the ESS

**B. Test Conditions:**

The ESS Facility will be in the on-line state at between 30% and 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR.

**C. Test procedure:**

**Measured Charge Latency:**

1. Send an active power charge command of PMAX to charge the batteries
2. The time measured from when the ESS receives the PMAX charge command until the power measured at the ESS Electric Metering Device changes from 0 MW to at least 1% of charge PMAX shall be the Actual System Charge Latency

**Measured Charge Ramp Rate:**

1. Send an active power charge command of PMAX to charge the batteries
2. The differential in MW of ESS Charging Energy divided by the time measured to ramp from 1% to charge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Charge Ramp Rate.

**Measured Discharge Latency:**

1. Send an active power discharge command of PMAX to discharge the batteries
2. The time measured from when the ESS receives the PMAX discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge PMAX shall be the Actual System Discharge Latency

**Measured Discharge Ramp Rate:**

1. Send an active power discharge command of PMAX to discharge the batteries
2. The differential in MW of ESS Discharge Energy divided by the time measured to ramp from 1% to discharge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Discharge Ramp Rate.

**D. Determination of ESS Response Shortfall:**

The calculation below will demonstrate the determination of the ESS Response Shortfall used to determine ESS Response Shortfall Damages according to Section 3.13. For clarity, any occurrence of an Actual System Charge Latency Shortfall, an Actual System Discharge Latency Shortfall, an Actual Discharge Ramp Rate Shortfall, or an Actual Charge Ramp Rate Shortfall shall be considered an ESS Response Shortfall that shall result in an ESS Response Shortfall Damage in accordance with Section 3.13. An ESS Response Shortfall Damage shall be due for each instance in which any of the following equations result in a positive value.

a) An "Actual System Charge Latency Shortfall" shall be calculated, which shall be equal to:

*Actual System Charge Latency Shortfall = Max (Guaranteed System Latency, Actual System Charge Latency) - Guaranteed System Latency*

ii. An "Actual Charge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

*Actual Charge Ramp Rate Shortfall = Max (Guaranteed Charge Ramp Rate, Actual Charge Ramp Rate) - Guaranteed Charge Ramp Rate*

iii. An "Actual System Discharge Latency Shortfall" shall be calculated, which shall be equal to:

*Actual System Discharge Latency Shortfall = Max (Guaranteed System Latency, Actual System Discharge Latency) - Guaranteed System Latency*

iv. An "Actual Discharge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

*Actual Discharge Ramp Rate Shortfall = Max (Guaranteed Discharge Ramp Rate, Actual Discharge Ramp Rate) - Guaranteed Discharge Ramp Rate*

For the purposes of these equations Guaranteed Charge & Discharge Ramp Rate means either the Guaranteed values in Section 3.12 or such other Buyer selected lesser ramp rate values per this Section F.2 of this Exhibit F.

**F.3 Frequency Response Capability Test**

**A. Purpose of Test:**

Demonstrate that the Energy Storage System is able to react to simulated changes in frequency applied by injecting a Frequency Profile at the Site Controller level.

**B. Definitions:**

| Term | Value/Meaning |
|---|---|
| Guaranteed PMAX Charge Power | 68 MW |
| Guaranteed PMAX Discharge Power | 68 MW |
| Guaranteed Frequency Response | 68 MW / 0.1 Hz |
| Point of Guarantee | High side of the generator step up transformer (115 kV) |
| Point of Measurement | High side of the generator step up transformer (115 kV) |
| CT Error | High side of the generator step up transformer (115 kV) |
| PT Error | 0.15% (estimated). The PT Error should be the error of the Potential Transformer used during the test. |
| Meter Error | 0.35% (estimated). The Meter Error should be the error of the Meter used during the test. |
| Loss Adjustment Factor | 0.1%.The Loss Adjustment Factor shall take into account all electrical losses, including cabling, switchgear, and transformer losses (load and no load) between the Point of Measurement and Point of Guarantee |
| $FreqLow$ | Low Frequency deadband setpoint |
| $FreqHigh$ | High Frequency deadband setpoint |
| $\Delta FreqLow$ | Frequency delta for low frequency |
| $\Delta FreqHigh$ | Frequency delta for high frequency |
| $\Delta Power\ Low$ | Power change for low frequency support |
| $\Delta Power\ High$ | Power change for high frequency support |

**C. Pre-Test Conditions:**

1. If the ambient temperature is below 20°C during the 24 hours prior to the Test, the Energy Storage System shall be pre-heated for 8 hours prior to the test. If the ambient temperature is above 50°C, the Test shall be postponed until the temperature is expected to drop below 50°C for a minimum of 24 hours.
2. Charge or discharge the Energy Storage System so that its SOC is between 30% and 60%.
3. If a ramp rate is required, the Energy Storage System should be configured with the appropriate ramp rate.
4. The Energy Storage System should report Available Discharge Power that is equal to or

greater than the Guaranteed PMAX Discharge Power.
5. The Energy Storage System should report Available Charge Power that is equal to or greater than the Guaranteed PMAX Charge Power.
6. A frequency injection profile shall be applied at the Site Controller in the form XX test points. The frequency profile shall be agreed upon between the Parties prior to the test. The Site Controller shall be configured to source the frequency readings from the uploaded profile.
7. The charge portion of the test shall be conducted when energy available from the grid is expected to be greater than the Guaranteed PMAX Charge Power unless specified otherwise by Buyer. The Parties shall ensure that the Energy Storage System is not limited by the grid in its ability to discharge up to the Guaranteed PMAX Discharge Power throughout the duration of the test.

**D. Test Procedure:**

1. Confirm the Energy Storage System has zero output.
2. Initiate the reading from the Frequency Profile.
3. Wait for the full execution of the profile.

**E. Recorded Values:**

1. Battery Real Power (MW)
2. Grid Frequency (Hz)

**F. Acceptance Criteria:**

For each under-frequency event in the profile with a deviation from nominal of Frequency Low Deviation, in steady state:

*Expected PowerUnder-Freq * (1 – Meter Error) ≤ Battery Real Power ≤ Expected PowerUnder-Freq * (1 + Meter Error)*

Where the expected Energy Storage System response is defined as:

$$Expected\ Power_{Under\text{-}Freq} = \text{Min}\ [(\Delta PowerLow / \Delta FreqLow) * Frequency\ Low\ Deviation, Guaranteed\ Discharge\ PMAX]$$

Frequency Low Deviation = Simulated Frequency – FreqLow

For each over-frequency event in the profile with a deviation from nominal of *Frequency High Deviation*, in steady state:

$$Expected\ Power_{Over\text{-}Freq} * (1 - Meter\ Error) \leq Battery\ Real\ Power \leq Expected\ Power_{Over\text{-}Freq} * (1 + Meter\ Error)$$

Where the expected Energy Storage System response is defined as:

*Expected Power*$_{Over\text{-}Freq}$
= Max [(ΔPowerHigh / ΔFreqHigh)* *Frequency High Deviation, -Guaranteed Charging PMAX*]

*Frequency High Deviation = Simulated Frequency – FreqHigh*

## G. Grid-Forming Capabilities Tests (LATER)

- Synthetic Inertia
- Voltage Persistence

**EXHIBIT G**
(to Energy Storage Agreement)

**INSURANCE COVERAGES**

Seller shall obtain and maintain the following insurance coverages, at a minimum:

**A. Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

**C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

**D. Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E. Network Security and Privacy Liability**. Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy

shall be written with minimum annual limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

**F. Property Insurance**. During construction and operation, Seller shall provide or arrange the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost, except that builders' risk insurance, which must qualify as "All Risk" insurance during the construction period, shall be in the amount of two hundred million dollars ($200,000,000). The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

**EXHIBIT H**
(to Energy Storage Agreement)

**AVAILABILITY GUARANTEES**

**Section 1. Definitions.**

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the ESA.

"**Actual ESS Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

"**Aggregate ESS Availability Damages Cap**" has the meaning set forth in Section 2.1(C) of this Exhibit.

"**Annual ESS Availability Damages Cap**" has the meaning set forth in Section 2.1(C).

"**Annual Report**" has the meaning set forth in Section 2.3 of this Exhibit.

"**ESS Availability Damages**" has the meaning set forth in Section 2.1(B) of this Exhibit.

"**ESS Availability LD Rate**" has the meaning set forth in Section 2.1(B) of this Exhibit.

"**ESS Available Hours**" means for a relevant Commercial Operation Month, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Month, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Month. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Excused Hours**" means, in any Commercial Operation Month, the aggregate Seller Excused Hours for such Commercial Operation Year to the extent that the ESS is affected during such hours; provided that, for purposes of the Guaranteed ESS Availability Percentage. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Period Hours**" means the number of hours for any given Commercial Operation Month, as may be prorated for any partial Commercial Operation Month.

"**ESS Unavailable Hours**" means those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Guaranteed ESS Availability Percentage**" has the meaning set forth in Section 2.1(A) of this Exhibit.

**Section 2. Availability Guarantees.**

1. ESS Availability Guarantee.

(A) ESS Availability Guarantee. Seller guarantees that the ESS shall achieve an Actual ESS Availability Percentage equal to or greater than ninety percent (90%) in each Commercial Operation Month after the Commercial Operation Date ("**Guaranteed ESS Availability Percentage**").

(B) ESS Availability Damages. For any Commercial Operation Month during which Seller fails to meet the Guaranteed ESS Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to 50% of ESS Payment Rate per MWh ("**ESS Availability LD Rate**") below the Guaranteed ESS Availability ("**ESS Availability Damages**"). A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

(C) ESS Availability Damages Cap, Termination, and Cure Rights. The total ESS Availability Damages payable by Seller for failure to meet the Guaranteed ESS Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to One Hundred Thousand Dollars ($100,000) per MW of Guaranteed ESS Capacity ("**Annual ESS Availability Damages Cap**") and in the aggregate at a value equivalent to One Hundred Ninety Two Thousand Dollars ($192,000) per MW of Guaranteed ESS Capacity; *provided*, that in the event of (a) an MPT Failure or (b) a material serial defect not generally known in the energy storage industry, the aggregate damages shall not exceed a value equivalent to Three Hundred and Twenty Thousand Dollars ($320,000) per MW of Guaranteed ESS Capacity ("**Aggregate ESS Availability Damages Cap**") over the Term of the ESA.

2. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed ESS Availability Percentage shall be the payment of damages, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the ESA. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies for Events of Default that may have caused Seller to fail to meet the Guaranteed ESS Availability Percentage.

3. Monthly Report. No later than the tenth (10th) Day of each calendar month during each Commercial Operation Year (or ten (10) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Monthly ESS Availability for the previous calendar month and the ESS Availability Damages, if any, due to Buyer (the "**Monthly Report**"). Such Monthly Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Monthly Report.

4. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the ESA.

## ATTACHMENT 1 TO EXHIBIT H

## EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES

### I. Example of Actual ESS Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

| | | Hours |
|---|---|---|
| | Monthly Hours ("MH") | 720 |
| | ESS Unavailable Hours ("EUH") | 86 |

Given these assumed facts, the Monthly ESS Available Hours for the ESS during the specific calendar month would be calculated as follows:

Monthly ESS Available Hours = MH – EUH: 634 = 720 – 86

**Monthly ESS Availability**

Given these assumed facts, the Monthly ESS Availability for the Project during the specific calendar month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Sum of Monthly Hours: 720 hours

(c) Monthly ESS Availability: (Sum of Monthly ESS Available Hours/Monthly Hours) x 100 = (634/720) x 100 = 88.1%

### II. Example of ESS Availability Damages

Example of ESS Availability Damages based on the following assumed facts:

(a) Seller's Monthly Guaranteed ESS Availability = 90%.

(b) Seller's Monthly ESS Availability = 88.1%.

(c) Seller's Guaranteed ESS Capacity = 68 MW.

Given these assumed facts, Seller calculates the ESS Availability Damages for such calendar month due to Buyer as follows:

(Seller's Monthly Guaranteed ESS Availability – Seller's Monthly ESS Availability) (the latter two expressed as a decimal) x Monthly Hours (assuming a 30-day month) x ESS Availability LD Rate x Seller's Guaranteed ESS Capacity = ESS Availability Damage

(0.90 – 0.881) x 720 x $[__] x 68 = $[___]

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 86 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

**EXHIBIT I**
(to Energy Storage Agreement)

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

**A.** WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Energy Storage Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

**B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

**1. GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

**(a)** Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].

**(b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are

deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

**2. DEMANDS AND PAYMENT.**

**(a)** If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

**(b)** A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with *Section 9* below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

**(c)** After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

**(a)** it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

**(b)** no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and

**(c)** the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of

any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4.** **RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**5.** **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6.** **WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

**(a)** Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance

on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

**(b)** No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

**(c)** Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

**7.** **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

**8.** **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

**9.** **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

| *TO GUARANTOR: ** | *TO COUNTERPARTY:* |
|---|---|
| [●]*Attn:* Treasurer | [●]*Attn:* |

| | |
|---|---|
| *[Tel:* [●] *-- for use in connection with courier deliveries]* | *[Tel:* [●] *-- for use in connection with courier deliveries]* |

Any Notice given in accordance with this *Section 9* will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10. MISCELLANEOUS.**

**(a)** This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

**(b)** This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.

**(c)** This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

**(d)** The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

**(e)** Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**(f)** Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and

(ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

**(g)** COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

**(h)** Delivery of an executed signature page of this Guaranty, and any subsequent amendment(s), by facsimile or email shall be effective as delivery of a manually executed counterpart hereof. The words "execute,", "execution,", "signed,", "signature," and words of similar import in this Guaranty shall be deemed to include electronic signatures or digital signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000, the Electronic Signatures and Records Act of 1999, or any other similar state laws based on the Uniform Electronic Transactions Act.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[●]

By:_____

Name:_____

Title:_____

**EXHIBIT J**
(to Energy Storage Agreement)

**COMMERCIAL OPERATION**
**FORM OF CERTIFICATION**

This certification ("Certification") of Commercial Operation is delivered by Windy Lane Energy Center, LLC ("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated June 6, 2025 ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of 68 MW for four (4) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project and that the Project meets, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

| Windy Lane Energy Center, LLC | **[Licensed Professional Engineer]** |
|---|---|
| Signature: _____ | Signature: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| | Date: _____ |
| | License Number and LPE Stamp: _____ |

# EXHIBIT K
(to Energy Storage Agreement)

## ROUNDTRIP EFFICIENCY GUARANTEE

| Year | Annual R/T Eff |
|---|---|
| 1 | 84% |
| 2 | 83.7% |
| 3 | 83.4% |
| 4 | 83.1% |
| 5 | 82.8% |
| 6 | 82.5% |
| 7 | 82.2% |
| 8 | 81.9% |
| 9 | 81.6% |
| 10 | 81.3% |
| 11 | 81% |
| 12 | 80.7% |
| 13 | 80.4% |
| 14 | 80.1% |
| 15 | 79.8% |
| 16 | 79.5% |
| 17 | 79.2% |
| 18 | 78.9% |
| 19 | 78.6% |
| 20 | 78.3% |

**EXHIBIT L**
(to Energy Storage Agreement)

**ESS Operating Restrictions**

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions:

**1.** Maximum of three hundred sixty-five (365) Equivalent Full Cycles per Commercial Operation Year.

**2.** Maximum of two (2) Equivalent Full Cycles per day

**3.** Maximum annual average state of charge: 50%

**4.** Max operating temperature of 45°C

**5.** State of charge cannot remain below 3% for greater than 1 hour continuously

# EXHIBIT M
(to Energy Storage Agreement)

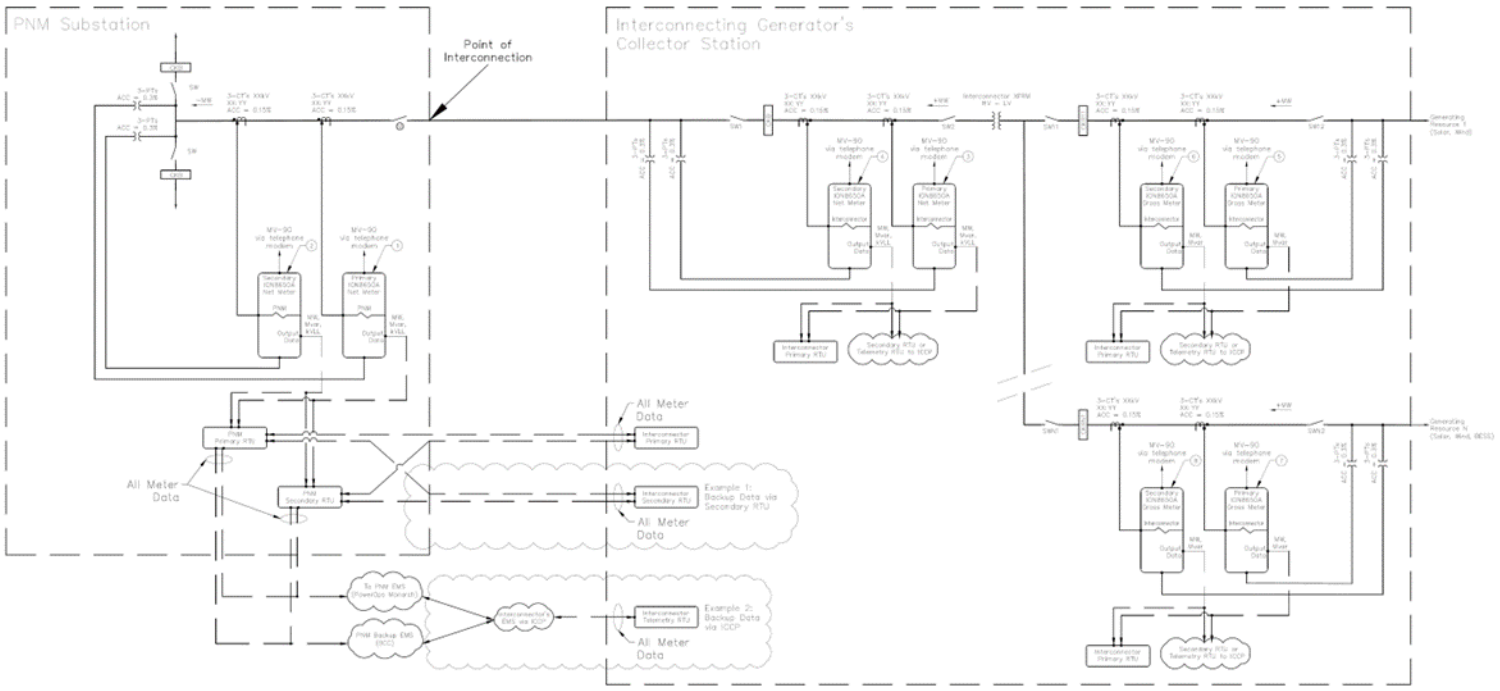
## ESS Functional Mapping

The Project's NERC verified ESS Generation Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

| | Entity Name | Point of Contact | E-mail | Phone |
|---|---|---|---|---|
| Generator Owner (GO) | | | | |
| Generator Operator (GOP) | | | | |
| Scheduling Coordinator Contact (SCC) | | | | |

**EXHIBIT N**
(to Energy Storage Agreement)

**Example Interconnection Metering Diagram**




| Meter | Description | Metering Data Requirments | Output Data |
|---|---|---|---|
| 1 | POI Meter (Primary) | Revenue quality metering data for the After-the-Fact (ATF) metering (MV90) system and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 2 | POI Meter (Secondary) | Revenue quality metering data for the After-the-Fact (ATF) metering (MV90) system and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 3 | Facility Net Meter (Primary) | Facility net output data to primary RTU for telemetry to Control Center and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 4 | Facility Net Meter (Secondary) | Facility net output data to primary RTU for telemetry to Control Center and awareness at Operations Control Center | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 5 | Gross Meter, Resource 1 (Primary) | Resource gross output data from primary RTU for telemetry to Control Center and awarness at Operations Control Center and revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 6 | Gross Meter, Resource 1 (Secondary) | Resource gross output data from primary RTU for telemetry to Control Center and awarness at Operations Control Center and backup revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 7 | Gross Meter, Resource N (Primary) | Resource gross output data from primary RTU for telemtry to Control center and awareness at Operations Control Center and revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |
| 8 | Gross Meter, Resource N (Secondary) | Resource gross output telemetry using ICCP or backup RTU to Control center and awareness at Operations Control Center, backup revenue quality data for ATF metering (MV90) system. | (MW, Mvar, kV$_{LL}$, MWH, MVARH) |

Note:

1. There must be no single point of failure for the measurement and transmission of real-time metering data to PNM's EMS. This includes networking equipment and communication paths. In the event that real-time metering data becomes unavailable or unreliable, PNM will require that the interconnected generation is disconnected until access to reliable data is re-established.
2. Retail meters are not shown on this diagram. Retail loads are not served by transmission.
3. PNM SCADA data to the facility will also include Automatic Generation Control (AGC) setpoints. PNM can also provide to the interconnecting facility SCADA data on the transmission line including: status of the sectionalizing breaker(s), disconnect switch status, and the POI meter data as applicable. A full list of SCADA data to be exchanged will be coordinated between PNM and the interconnector during design for the facilities.

| REVISION | | | |
|---|---|---|---|
| NO. | DATE | BY | |
| 0 | 11-15-23 | CVR | REV'D FINALIZED TITLE BLOCK ADDED |

PROPRIETARY STATEMENT
THIS DOCUMENT AND ALL PREVIOUS ISSUES ARE THE PROPERTY OF PUBLIC SERVICE COMPANY OF NEW MEXICO ("PNM"), AND NEITHER RECEIPT NOR POSSESSION THEREOF, IMPLIES OR TRANSFERS ANY RIGHT IN OR LICENSE TO USE THIS DOCUMENT THE SUBJECT MATTER THEREOF OR ANY DESIGN OR TECHNICAL INFORMATION SHOWN THEREON, OR ANY RIGHT TO REPRODUCE THIS DOCUMENT OR ANY PART THEREOF. NEITHER THIS DOCUMENT NOR ANY INFORMATION CONTAINED THEREIN MAY BE COPIED, REPRODUCED, OR OTHERWISE USED OR DISCLOSED TO ANY OTHER PARTY WITHOUT FIRST OBTAINING THE EXPRESS, WRITTEN PERMISSION OF PNM. THIS DOCUMENT IS PROVIDED UNDER THE EXPRESS CONDITION, THAT IT WILL BE HELD IN CONFIDENCE BY THE RECIPIENT, THAT IT IS SUBJECT TO RETURN UPON DEMAND, AND THAT IT WILL NOT BE USED IN ANY WAY DETRIMENTAL TO PNM.

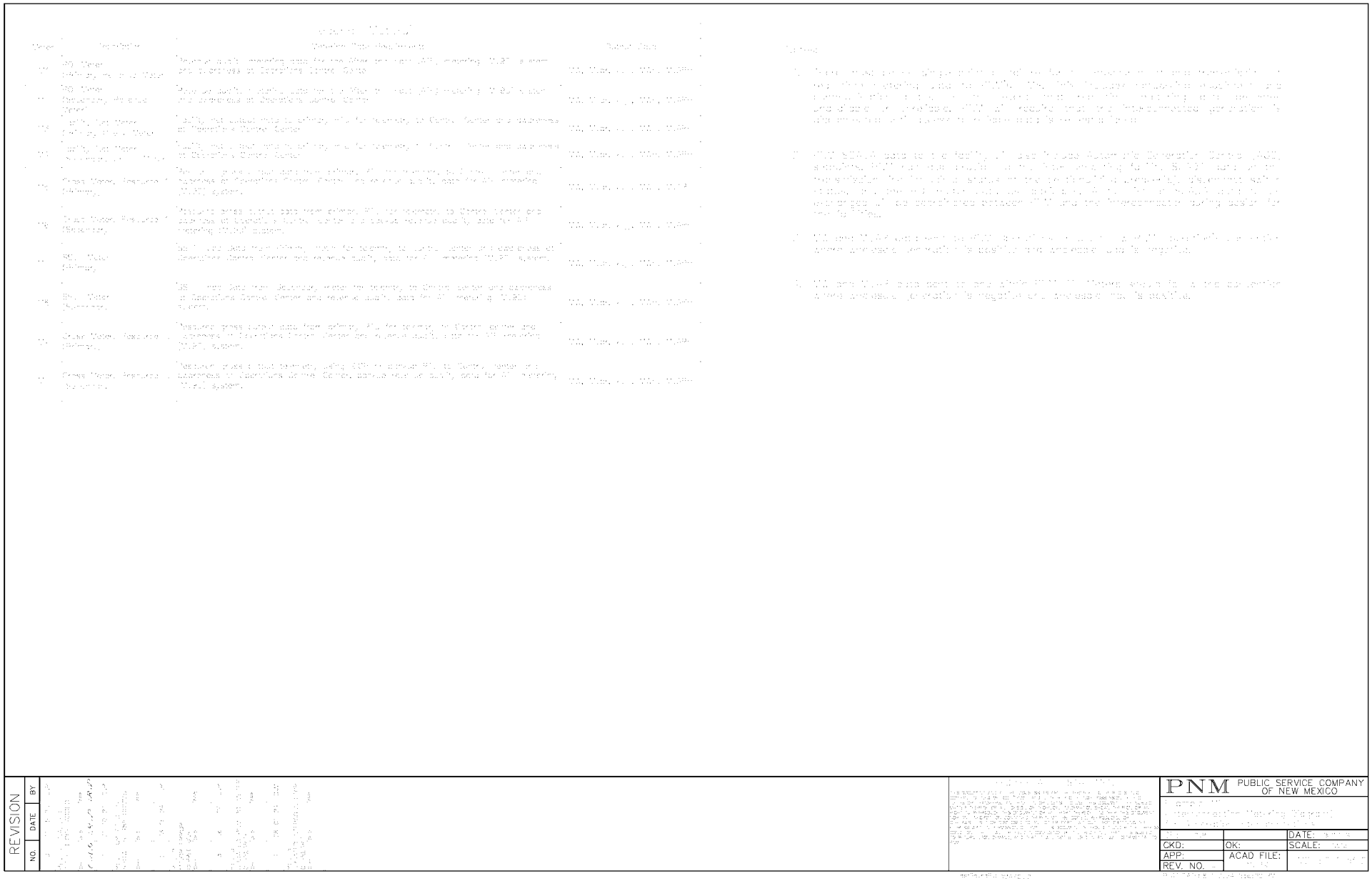
LastSavedBy: gagx

PNM PUBLIC SERVICE COMPANY OF NEW MEXICO

Example IMD
(Interconnection Metering Diagram)
for Generation Interconnections

| | | |
|---|---|---|
| DR: CVR | | DATE: 11/15/2023 |
| CKD: CAG | OK: | SCALE: NONE |
| APP: | ACAD FILE: IMD-E | IMD-E 1 of 1 |
| REV. NO. 0 | | |

PLOT DATE: 11/15/2023 4:41:25 PM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OF NEW MEXICO
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SCALE:
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REV. NO.

**EXHIBIT O**
(to Energy Storage Agreement)

**COMMISSIONING AND TESTING PROCESS**

**Section 1. Purpose.**

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the ESA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Diagram as outlined in Exhibit N of the ESA and complete all testing as defined in Exhibit F of the ESA.

**Section 2. Identifying Key Points of Contact.**

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the ESA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

**Table 1 – Required Information for Point of Contact List.**

| CONTACT | Company | Group | Address | Project Role | Office Phone | Mobile Phone | E-MAIL |
|---|---|---|---|---|---|---|---|
| Eric Meadors | PNM | Generation Contracts & Development | 2401 Aztec Rd NE, MS Z120, Albuquerque, NM 87107 | Contract Manager | 505-241-2179 | 505-801-7803 | Eric.Meadors@pnm.com |

The POC List shall identify, but not be limited to, the following:

**Buyer Team:** Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.
- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.
- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.
- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect ("**PCI**") modeling for functionality required for the participating resource schedule coordination ("**PRSC**") (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.
- Power Operations, "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

**Seller Team:** The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- Project Manager – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – Shall mean the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.
- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.
- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:
  - Balancing Area Authority (BAA)
  - Transmission Owner (TO)

- Transmission Operator (TOP)
- Generator Owner (GO)
- Generator Operator (GOP)
- Scheduling Coordinator (SC)
- Distribution System Operator (DSO)

**Section 3. Process Overview.**

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

**Section 3.1 Commissioning Kickoff Meeting.**

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

**Section 3.2 Pre-Commissioning.**

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

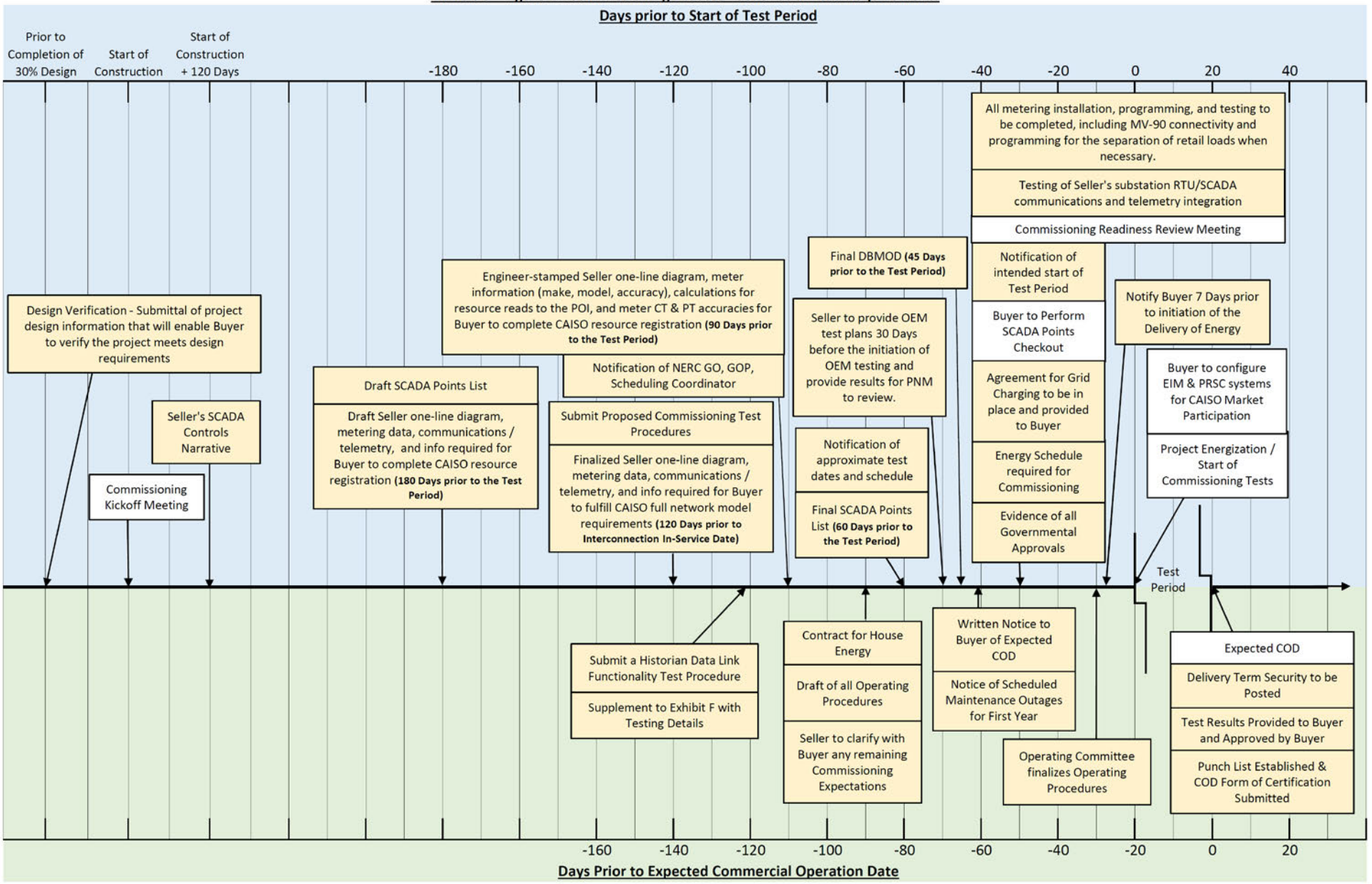
Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1 (Table 2 to prevail in any inconsistency with Figure 1):

*Table 2: Pre-Commissioning Requirements*

| Requirement | Description | Responsible Party | Contributor(s) | Timeline |
|---|---|---|---|---|
| **Design Verification** | Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving ESA obligations, including metering, etc. | **Seller** | Generation Engineering | After completion of 30% design phase of project |
| **Seller's SCADA Controls Narrative** | Controls narrative detailing items related to SCADA and telemetry planning. | **Seller** | PowerOps | 120 Days after Start of Construction |
| | Final DB Mod file delivered to PowerOps. | **Seller** | PowerOps | 45 Days prior to the scheduled Test Period |
| **Seller's Substation Commissioning** | Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing. | **Seller** | Buyer's Project Manager | 30 Days prior to the scheduled Test Period |
| **Metering** | All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Diagram in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary. | **Seller** | PowerOps | 30 Days prior to the scheduled Test Period |
| **CAISO Resource Registration** | Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration. | **Seller** | PowerOps | 180 Days prior to the scheduled Test Period |
| | A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. Delays in Seller's submission to Buyer of this information will likely result in a delay in the transmission interconnection in-service date. | **Seller** | PowerOps | 120 Days prior to transmission interconnection in-service date |
| | Buyer EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps. | **PowerOps** | Seller | |
| | Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter. | **Seller** | PowerOps | No later than 90 Days prior to the scheduled Test Period |
| **Power Operations Engineering Requirements for Commissioning** (Attachment 1) | This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. | **PowerOps** | Seller | SCADA Points Check Out: PowerOps will conduct a checkout 30 Days prior to the beginning of the scheduled Test Period. |
| **Power Operations & WPM Systems configuration** | EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent ESS resources for CAISO market participation. | **PowerOps & WPM IT Support** | Seller | Prior to the beginning of the scheduled Test Period |
| **Agreement for Grid Charging during testing** | During testing/commissioning of facilities, agreements need to be in place with a copy provided to Buyer to allow and plan for grid charging of batteries during the testing process. These agreements will clearly define WPM, GO, GOP or their SC, BA, TO and TOP. | **Seller** | Generation Engineering | Must be complete 30 Days prior to the beginning of the scheduled Test Period. |
| **Operating Procedure** | Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering. | **Seller** | PowerOps | 90 Days prior to the Commercial Operation Date |
| | An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system. | **Seller/Buyer** | Seller / PowerOps / Generation Engineering | 30 Days prior to the Commercial Operation Date |

| Requirement | Description | Responsible Party | Contributor(s) | Timeline |
|---|---|---|---|---|
| **OEM Test Plan** | The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide Buyer with a certificate from an officer certifying that the testing required under the supply agreement with OEM was satisfactorily conducted. | **Seller** | Generation Engineering | All OEM related testing must be completed prior to declaring COD. Seller's officer's certification may be included in the certification required by clause (g) of Commercial Operation. |
| **Test Energy Plan & Schedule** | Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated ESA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans. | **Seller** | Generation Engineering | Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period. |
| **Commissioning Readiness Review Meeting** | Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: Attachment 2: Commissioning Readiness Review | **Generation Engineering** | Seller, PowerOps | 30 Days prior to the beginning of the scheduled Test Period |

**Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements**




Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

**Section 3.3 Commissioning.**

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the ESA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.

- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Buyer Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the ESA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

For Seller's commissioning activities that require Buyer scheduling of energy delivery, Seller's failure to advise Buyer of any change to the planned timing of commissioning activities prior to 48 hours in advance of the change may result in an inability of Seller to conduct testing. Any such delay in commissioning activities as a result of late notification will be to Seller's account.

Seller shall perform Commissioning Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

**Section 3.4 Final Requirements Prior to COD.**

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

## ATTACHMENT 1 TO EXHIBIT O

## BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer 90 Days prior to the beginning of the Test Period:
    a. Nameplate values: MW, MWh, round trip efficiency, etc.
    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.
    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.
    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.
    d. Telemetry for Seller's substation awareness shall include:
        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - ESS total gross values and total net values (in both MW and MVAr)
                - Gross and net values shall be provided for each resource registered with CAISO
            - Point of Delivery values – MW, MVAr
            - AGC setpoints for ESS and voltage setpoint. As well as the feedback for those setpoints.
            - Total ESS cycle count
            - Total ESS State of Charge (SOC) in both percent and MWH
            - Total real power target
            - Total full charge energy
            - Total nominal energy
            - Total energy Rem full power
            - Total max charge power

e. Meteorology data: Seller shall provide meteorology data (if any) with the provided SCADA points.

3. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

## ATTACHMENT 2 TO EXHIBIT O

## COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. Confirmation that everything is in place to begin testing.
    a. The configuration of the system is stabilized.
    b. All planned preliminary, informal, functional, unit level, subsystem, system, and qualification tests have been conducted with satisfactory results.
    c. Any deficiencies detected in the system have been addressed.
5. The expected result and how might the test evaluation results affect the program.
6. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
7. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and operational testers prior to any test using personnel.
8. The fallback plan should a technical issue or potential showstopper arise during testing.
    a. The test director that will decide if an issue is a showstopper.
9. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

# EXHIBIT P

## FORM OF LENDER CONSENT

## CONSENT AND AGREEMENT

This Consent and Agreement (this "***Consent***") is made and entered into as of ___ _, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

## RECITALS

Windy Lane Energy Center, LLC ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of a photovoltaic solar electric energy generating facility owned by Seller and located in De Baca County, New Mexico (the "***Project***").

Seller and Buyer have entered into that certain Energy Storage Agreement, dated as of June 6, 2025 (as amended, restated, supplemented or otherwise modified from time to time, the "***ESA***"), relating to the Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the ESA (the "***Pledged ESA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

## AGREEMENTS

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged ESA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged ESA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of solar energy facilities of comparable size to the Project and the ability perform all aspects of the ESA; (d) has agreed in writing to be bound by the ESA and to assume all of Seller's obligations under the ESA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged ESA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets

all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of and after the date of assignment, the Facility Development Security Amount or the Operational Security, as applicable, and (iii) Buyer has not terminated this ESA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged ESA (a "*Subsequent Seller*"), may be substituted for Seller under the ESA and Buyer shall recognize such Subsequent Seller as its counterparty under the ESA and, subject to all rights and remedies of Buyer under the ESA, continue to perform its obligations under the ESA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the ESA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the ESA. The transfer of the ESA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the ESA, Lender may cure such default by the deadline provided therefor in the ESA. Buyer will not terminate the ESA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the ESA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the ESA, (b) with respect to a default under Section 12.1(B)(8) or 22.21(A),(B),(C) or (E) of the Agreement, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the ESA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the ESA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the ESA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Solar Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. ESA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the ESA; provided that notwithstanding the foregoing, Buyer may terminate the ESA without Lender consent due to an uncured Event of Default under the ESA after the expiration of Lender's rights to cure under

Section 4 hereof.

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the ESA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the ESA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the ESA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the ESA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the ESA is attached hereto as *Exhibit A* and the ESA has not been further amended, (v) Buyer is not in default of any of its obligations under the ESA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, Seller is not in default of any of its obligations under the ESA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, there are no material disputes between Buyer and Seller under the ESA, (viii) Buyer has not assigned any interest it has in the ESA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the ESA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the ESA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the ESA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the ESA.

8. Replacement Agreement. If the ESA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the ESA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the ESA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the ESA (other than the bankruptcy of Seller or a transfer of the Solar Project to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure

thereupon and in compliance with this Consent but that was not in compliance with Section 9.2 (Seller Permitted Assignment) of the ESA).

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the ESA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the ESA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

**[BUYER]**

By: _____
Name:_____
Title:_____

**[LENDER]**

By _____
Its _____

ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the ESA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the ESA, as and when required under the ESA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the ESA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the ESA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the ESA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the ESA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the ESA. Seller shall have no rights against Buyer, under the ESA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

## EXHIBIT Q

### Form of Estoppel Certificate

### ESTOPPEL CERTIFICATE

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Energy Storage Agreement, dated as of _____ (the "***ESA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a solar energy generating facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the ESA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the ESA have been duly authorized by all necessary action on the part of Buyer, (ii) the ESA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the ESA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the ESA is attached hereto as *Exhibit A* and the ESA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the ESA, Buyer is not in default of any of its obligations under the ESA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, Seller is not in default of any of its obligations under the ESA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, there are no material disputes between Buyer and Seller under the ESA, (viii) Buyer has not assigned any interest it has in the ESA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the ESA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, governmental authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the ESA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the ESA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the ESA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

[BUYER]

By: _____
Name:_____
Title:_____

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

| | | |
|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO.47 AND AMENDED RIDER NO. 49** | ) | **Case No. 25 -00048-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO** | ) | |

**AFFIDAVIT**

STATE OF NEW MEXICO )
) ss
COUNTY OF BERNALILLO )

**GARY B. BARNARD, Executive Director of Strategic Energy Development, Renewables and Contracts, PNMR Services Company,** upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Gary B. Barnard,** and it is true and accurate based on my own personal knowledge and belief.

DATED this 13th day of June, 2025.

/s/ Gary Barnard Digitally signed by Gary Barnard Date: 2025.06.13 09:00:59 -06'00'

**GARY B. BARNARD**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

| | | |
|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO. 47 AND AMENDED RIDER NO 49** | ) | **Case No. 25-00048-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO,** | ) | |
| **Applicant.** | ) | |

**DIRECT TESTIMONY**

**OF**

**THOMAS P. DUANE**

**June 13, 2025**

**NMPRC CASE NO. 25-00____-UT**
**INDEX TO THE DIRECT TESTIMONY OF THOMAS P. DUANE**

**WITNESS FOR**
**PUBLIC SERVICE COMPANY OF NEW MEXICO**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AFFIDAVIT

**DIRECT TESTIMONY OF**
**THOMAS P. DUANE**
**NMPRC CASE NO. 25-00____-UT**

## I. INTRODUCTION AND PURPOSE

**Q. Please state your name, position, and business address.**

A. My name is Thomas P. Duane. I am the Director of Integrated Resource Planning at Public Service Company of New Mexico ("PNM"). My business address is 2401 Aztec Rd. NE, Albuquerque, NM 87107.

**Q. Please summarize your educational background and professional qualifications.**

A. My education and professional qualifications are provided in PNM Exhibit TPD-1. Prior to my current role, I served as Manager, Transmission Planning for PNM and was responsible for the evaluation of the existing transmission planning functions, analyzing transmission system deficiencies, and creating plans for the capital expansion of the transmission system.

**Q. Have you previously testified in regulatory proceedings?**

A. Yes. The cases in which I have testified are identified in PNM Exhibit TPD-1.

**Q. Please describe the responsibilities of the Integrated Resource Planning department.**

A. The Integrated Resource Planning department is responsible for developing PNM's resource plans and the regulatory filings to support those resource plans, including the triennial Integrated Resource Plan ("IRP") and associated updates. The Integrated Resource Planning department is also responsible for performing resource planning

analysis to support resource additions and acquisitions, all of which require New Mexico Public Regulation Commission ("NMPRC" or "Commission") approval such as those being requested in this docket.

**Q. What is the purpose of your direct testimony?**

**A.** My testimony will demonstrate that PNM will be able to continue the delivery of safe and reliable electric service and address resource planning-related matters associated with the Customer's expanded retail load. My testimony will also describe how the Purchase Power Agreements ("PPAs") and the Energy Storage Agreements ("ESAs") are consistent with PNM's IRP. Finally, I describe PNM's consistency with certain provisions of 17.9.551 NMAC. As PNM Witness Barnard explained in his testimony, those agreements are:

- Four Mile Mesa PPA (100 MW Solar) and ESA (100 MW 4-hour Battery Energy Storage System ("BESS"))
- Star Light PPA (100 MW Solar) and ESA (100 MW 4-hour BESS)
- Windy Lane PPA (90 MW Solar) and ESA (68 MW 4-hour BESS)

**Q. Are the requested resources that will be added to PNM's overall resource portfolio to meet the retail service requirements of the Customer in accordance with the Third Amended and Restated Special Services Contract ("SSC") included in this Application?**

**A.** Yes. These agreements will be used to meet the retail service requirements of Greater Kudu LLC ("Customer") and the growing load of the Customer's data center in Los Lunas, New Mexico ("Data Center") in accordance with the terms of the Third Amended and Restated Special Service Contract ("SSC") between PNM and the Customer. If approved by the Commission, these agreements will be added to PNM's designated network resource portfolio to supplement the capacity and energy approved in Case No. 16-00191-UT, Case No. 18-00009-UT, Case No. 18-00269-UT, Case No. 21-00031-UT, and Case No 23-00251-UT to support the Data Center's projected annual consumption of electricity. The solar generation and battery storage in this case is designed to cover the projected load growth of the Customer.

**Q. Will the projected approximately 85 MW growth in the Customer load and PNM's addition of both the PPAs and ESAs requested in this Application to match that load increase impose additional costs on other PNM Retail customers?**

**A.** No. The 290 MW of solar generation and 268 MW of battery storage that PNM is requesting in this case can be integrated into PNM's generation fleet without the need for additional resources to maintain adequate planning and operating reserves on its system. As I discuss later in this testimony, the respective BESS are included in this portfolio of resources to maintain system resource adequacy. The BESS plays a key role in optimizing use of solar energy and minimizing curtailments by shifting use of the energy later in the day when solar energy is no longer supporting system load. As PNM Witness Aguirre explains, the costs of the PPAs and ESAs will be recovered from

the Customer and will not result in additional costs for PNM's other retail customer classes.

**Q. Are you sponsoring any exhibits in addition to your resume?**

**A.** Yes, I am also sponsoring the following exhibit:

- PNM Exhibit TPD-2: Comparison of Customer's load projections with renewable energy supplies acquired for Customer.

PNM Exhibit TPD-2 contains three graphs. These graphs compare the expansion of the Data Center to the resources proposed in this case. These graphs show that the resources proposed in this case will not only meet the energy needs of the Data Center expansion, as required by the SSC, but will also meet its capacity needs.

## II. SAFE AND RELIABLE SERVICE

**Q. How does PNM's current projection of the Customer's approximately 85 MW load growth compare to energy that will be supplied by the renewable energy resources approved by the Commission in previous cases and requested by PNM in this Application?**

**A.** The estimated annual energy needed to cover the load increase is approximately 785 GWh which is equal to the expected annual energy produced from the proposed solar resource additions. Figure 1 in PNM Exhibit TPD-2 provides a comparison of the projected load energy for the Customer's planned expansion along with the expected energy that will be produced from the resources requested in this case.

Figure 2 in PNM Exhibit TPD-2 shows the current projection of the Customer's total annual energy requirements after the expansion along with the total annual energy of existing resources plus the resources requested in this case. The annual projection for energy requirements is 2,800 GWh while the expected energy produced by existing resources and the resources additions in this Application is 3,100 GWh.

**Q. Are the proposed resources sufficient to cover the projected Customer load increase of approximately 85 MW?**

**A.** Yes. Figure 3 in PNM Exhibit TPD-2 shows the peak July demand forecasted for the Customer load versus the effective capacity provided by the Customer's solar, wind and battery resources including the resources requested in this case. The effective capacity is based on calculated 2028 system average Effective Load Carrying Capability ("ELCC") values of the resources during the hours that have the highest loss of load probability. These ELCC values are approximately 5% of nameplate capacity for solar resources and 78% of nameplate capacity for 4-hour BESS. The estimated peak load of the customer is 346 MW after the load expansion with Customer resources having an effective capacity of 363 MW.

**Q. Will the projected growth of the Customer load and the addition of the proposed PPAs and ESAs affect PNM's ability to provide safe and reliable service for all customers?**

**A.** No. The addition of the proposed PPAs and ESAs is consistent with assumptions used in PNM's most recent IRP, as supplemented in October 2024, and with the provision of safe and reliable service to all customers. The proposed resources will continue to allow PNM's generation portfolio to meet or exceed the reliability criteria of 0.1 LOLE. As with previous cases adding PNM retail resources or assessing the adequacy of selected Customer resources, PNM had PowerGem, LLC. (previously Astrape) define the minimum amount of battery needed to add the Customer's load expansion without degrading the LOLE. The amounts needed were reviewed up through 2032 with expectations that 200 MW of battery is required to prevent degradation in the LOLE. The result is somewhat dependent on assumed resource additions and retirements between 2028 and 2032. While the solar provides a small capacity benefit, the battery additions provide the majority of the reliability benefit and are sized to prevent a degradation in the reliability of the system by ensuring that capacity is available during the hours of greatest demand on PNM's resource portfolio which is occurring during post-solar hours in the evening and, to a lesser degree, pre-solar hours during non--summer months. As noted in Nicholas Phillips testimony in Case No. 23-00251-UT, the addition of solar resources for energy to serve firm load additions requires capacity additions to maintain reliability in non-solar hours. Consequently, adding a new load of meaningful size (whether a single load or in aggregate) to the system will require procurement of additional firm capacity if the energy is provided from solar resources. This capacity is provided by the co-located BESS additions included in this Application.

**Q. Does the battery capacity requested in this Application provide other benefits in addition to preventing degradation in the LOLE reliability metric?**

**A.** Yes. With the additional battery capacity, the projected additional curtailments were reduced to 16,000 MWh resulting in 98% of the total energy potential from the solar generation being utilized to serve load. Addition of solar generation without storage results in increased curtailment of renewable resources at the current and planned renewable penetration levels on PNM's system. Based on production cost model runs for 2028, the estimated annual total energy generated by the 290 MW of solar capacity is approximately 785,000 MWh. Approximately 42,000 MWh of additional system curtailments occur when modeling the increase in the Customer load and the solar generation but not including the 268 MW of 4-hour battery capacity.

**Q. Is the addition of the proposed PPAs and ESAs at the lowest reasonable cost as required by 17.9.551.8(D)(6) NMAC?**

**A.** Yes. The cost of the resources is reasonable. The Customer has selected the recommended resources through a competitive process and has indicated that the cost is acceptable to it. The PPA and ESA costs are covered by the Customer as required under the SSC and Rider 47 and will not be borne by any other PNM customers. PNM Witness Barnard addresses the cost of the resources in his direct testimony, and PNM Witness Aguirre explains how the cost will be recovered from the Customer.

## III. CONSISTENCY WITH THE IRP

**Q. Are the renewable resource additions proposed in this Application consistent with PNM's most recent Commission-accepted IRP as required by 17.9.551.8(D)(8) NMAC?**

A. Yes, the proposed additions are consistent with PNM's 2023 IRP as supplemented in October of 2024 and accepted by the Commission in November 2024. The Customer load expansion was included in the load forecast increase addressed by the October supplemental. As a result, the resource additions in this case are within the range of need identified in the supplemental for the 2028 timeframe. The load increase from the 2023 IRP and included in the IRP supplemental covered both the Customer's expansion as well as the increase of other customers identified in PNM's latest load forecast.

**Q. Would PNM require additional generation resources to meet the Customer load growth without the proposed PPAs and ESAs?**

A. Yes, without the proposed PPAs and ESAs, PNM would need to procure the BESS or other capacity to ensure the Customer's load growth does not degrade the level of reliability to other retail customers. PNM would also need to identify sources for the additional energy needed to supply the load increase. The proposed PPAs and ESAs prevent the need for PNM to seek other means of sourcing the Customer's load growth.

## IV. CONCLUSION

**Q. Please summarize your conclusions.**

**A.** PNM has reviewed the proposed resource additions in this case and finds that the resource additions will not impact PNM's ability to continue the delivery of safe and reliable electric service and do not result in a cost burden to other retail customers. As explained above, the recommended PPAs and ESAs in resource additions that are consistent with PNM's IRP. I recommend that the resource additions be approved as described in this case.

**Q. Does this complete your direct testimony?**

**A.** Yes.

*GCG#533860*

Resume of Thomas P. Duane

# PNM Exhibit TPD-1

Is contained in the following 2 pages.

# PNM EXHIBIT TPD-1

**Name:** Thomas P. Duane

**Address:** Public Service Company of New Mexico
414 Silver Ave SW
Albuquerque, New Mexico 87102

**Position:** Manager, Transmission Planning

**Education:** Bachelor of Science in Electrical Engineering,
University of Colorado, Boulder, Colorado 1980

Master of Science in Electrical Engineering,
Electric Utility Management Program,
New Mexico State University, Las Cruces, New Mexico 1998

**Employment:** Public Service Company of New Mexico, Albuquerque, New Mexico

- Director, Integrated Resource Planning 2024
- Transmission Planning Engineer, Manager Transmission Planning (12 Years) 1984-1996, 2006-2024
- Manager, Production Modeling 1996-2005
- Operations Engineer, Wholesale Power Marketing Analyst 1981-1984, 2005

**Licensure:** Licensed Professional Engineer in the State of New Mexico

**Professional Affiliations:** Member of Institute of Electrical and Electronic Engineers ("IEEE") Power Engineering Society and Computer Society

**Experience:**

- Power System Analysis, Planning and Operations – Steady State, Dynamic Stability, Transient, Short Circuit, Power Operations, Production Costs, Generation Dispatch, Resource Planning
- Committee Representation – over 25 years in inter-utility coordination groups, WECC and ERCOT reliability committees, RTO Tariff negotiations, stakeholder groups and industry organizations.

**Previous Testimony:**

New Mexico Public Regulation Commission (2024): Provided testimony on behalf of Public Service Company of New Mexico regarding the portfolio analysis and selection of resources associated with the 2028 resource application. Case No. 24-00271-UT.

New Mexico Public Regulation Commission (2023): Provided testimony on behalf of Public Service Company of New Mexico regarding transmission system impacts associated with the 2026 resource application. Case No. 23-00353-UT.

New Mexico Public Regulation Commission (2023): Provided testimony on behalf of Public Service Company of New Mexico regarding transmission system impacts associated with TAG solar facility interconnection. Case No Case No. 23-00251-UT.

New Mexico Public Regulation Commission (2021): Provided testimony on behalf of Public Service Company of New Mexico regarding transmission system impacts

associated with replacement resources for 114 MW of Palo Verde Nuclear generation. Case No Case No. 21-00215-UT.

New Mexico Public Regulation Commission (2020): Provided rebuttal testimony on behalf of Public Service Company of New Mexico regarding transmission system impacts associated with replacement resources for San Juan Generation Station Units 1 and 4. Case No 19-00195-UT.

County of Torrance, Seventh Judicial District Court (2020) – Application for Order of Immediate Possession, State of New Mexico, Case D-722-CV-2020-00083, Provided affidavit regarding the need for immediate possession of right-of-way to maintain an existing transmission line.

Federal Energy Regulatory Commission (2010): Provide affidavit on the PNM Balancing Authority Area System Import Limit (SIL) calculations used in the Triennial Market Power Update. Docket Nos. ER96-1551, ER01-615 and ER09-746.

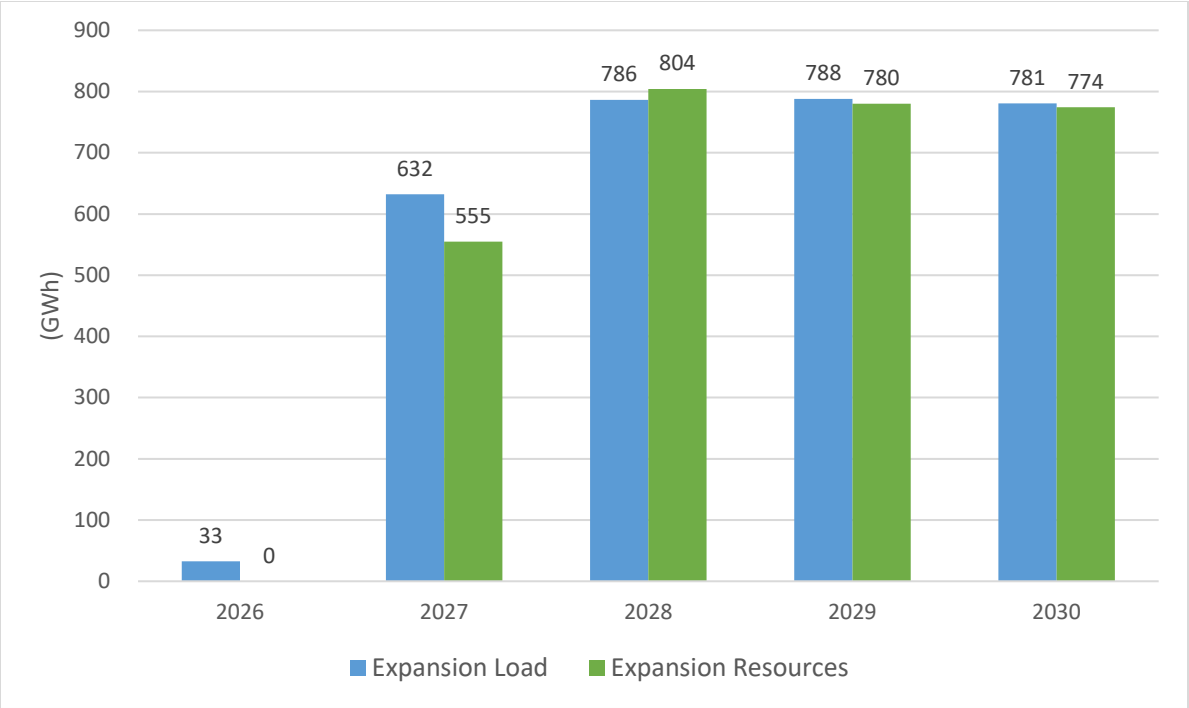
Comparison of Customer's Load Projections with Renewable Energy Supplies Acquired for Customer

# PNM Exhibit TPD-2

Is contained in the following 2 pages.

# PNM EXHIBIT TPD-2

## Figure 1 – Data Center Expansion Load & Expansion Resource Energy (GWh)




## Figure 2 -Total Data Center Load and Resource Energy (GWh)

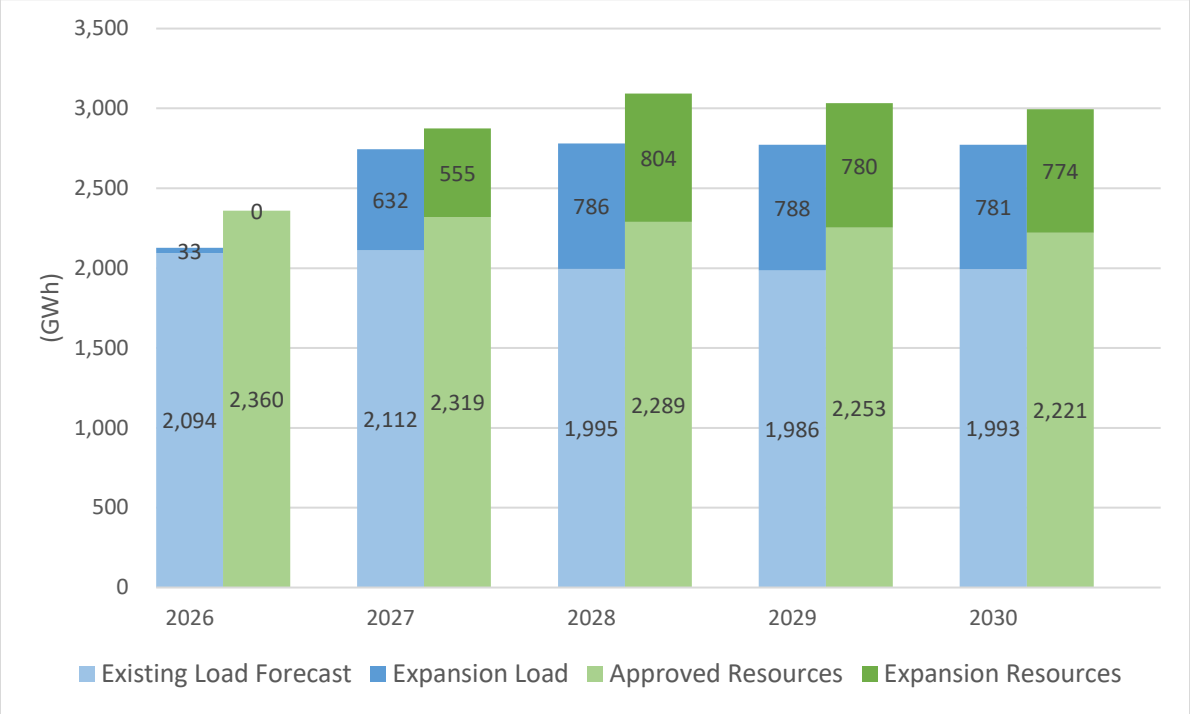
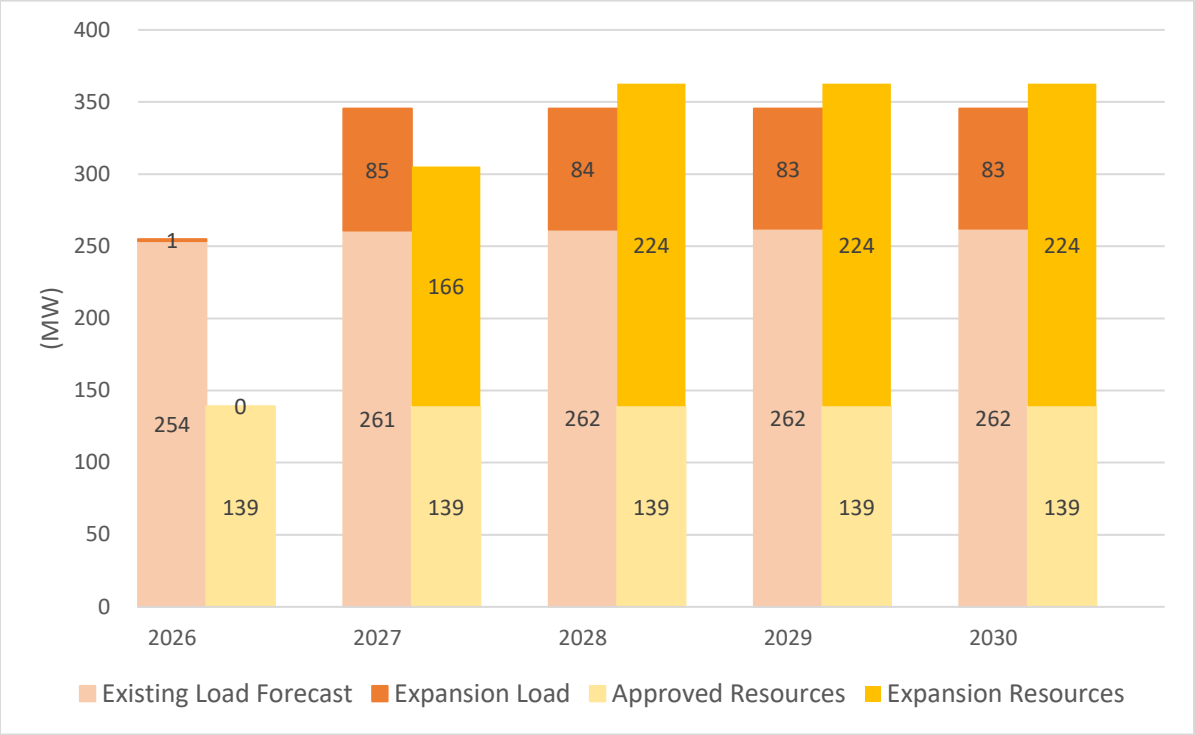


**Figure 3 - Data Center Peak Load vs Effective* Resource Capacity (MW Firm)**




*Resource capacity is based on an estimated system average solar ELCC of 5%, an estimated system average wind ELCC of 20% and an estimated system average battery ELCC of 78%

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

| | | |
|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO.47 AND AMENDED RIDER NO. 49** | ) | **Case No. 25 -00048-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO** | ) | |

**AFFIDAVIT**

STATE OF NEW MEXICO )
) ss
COUNTY OF BERNALILLO )

**THOMAS P. DUANE, Director of Integrated Resource Planning, Public Service Company of New Mexico,** upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Thomas P. Duane,** and it is true and accurate based on my own personal knowledge and belief.

DATED this 13th day of June, 2025.

/s/ Thomas P Duane Digitally signed by Thomas P Duane Date: 2025.06.13 09:52:35 -06'00'

**THOMAS P. DUANE**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

| | | |
|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO. 47 AND AMENDED RIDER NO. 49** | ) | **Case No. 25-00048-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO,** | ) | |
| **Applicant.** | ) | |

**DIRECT TESTIMONY**

**OF**

**STEPHEN JENKINS**

**June 13, 2025**

**NMPRC CASE NO. 25-00____-UT**
**INDEX TO THE DIRECT TESTIMONY OF STEPHEN JENKINS**

**WITNESS FOR**
**PUBLIC SERVICE COMPANY OF NEW MEXICO**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PNM EXHIBIT SJ-1 Resume of Stephen Jenkins

AFFIDAVIT

**DIRECT TESTIMONY OF**
**STEPHEN JENKINS**
**NMPRC CASE NO. 25-00____-UT**

## I. INTRODUCTION AND PURPOSE

**Q. Please state your name, position, and business address.**

A. My name is Stephen Jenkins. I am the Manager of Transmission Planning Engineering at Public Service Company of New Mexico ("PNM"). My business address is Public Service Company of New Mexico, 2401 Aztec Rd. NE, Albuquerque, NM 87107.

**Q. Please summarize your education and professional qualifications and describe your job duties.**

A. My education and professional qualifications are provided in PNM Exhibit SJ-1. In my role as Manager of Transmission Planning, I oversee technical evaluation of generator interconnection applications to ensure reliability of the bulk electric system and inform company strategy surrounding the capital expansion of the transmission system.

**Q. Have you previously testified in regulatory proceedings?**

A. Yes. Cases in which I have testified before the New Mexico Public Regulation Commission ("Commission") are identified in PNM Exhibit SJ-1.

**Q. What is the purpose of your direct testimony?**

A. The purpose of my testimony is to address the transmission and interconnection investments associated with the three purchased power agreements ("PPAs") and

the three energy storage agreements ("ESAs") that PNM is seeking approval of in this case to meet the terms of the Third Amended and Restated Special Service Contract ("Restated SSC") with Greater Kudu LLC ("Customer")[1], as amended and proposed in PNM's Application. Specifically, my testimony will:

- Address the Rule 551.8(D)(3)[2] which requires a utility seeking approval of a long-term purchased power agreement ("LTPPA") to describe transmission costs which may include third-party transmission wheeling or construction of transmission to facilitate purchases under the LTPPA;
- Provide a description of PNM's generator interconnection and transmission service procedures;
- Describe the transmission and interconnection facilities required for the three PPAs and three ESAs; and
- Provide an overview of the Federal Energy Regulatory Commission ("FERC") process that governs open access transmission interconnections and how PNM used that process to identify the transmission facilities and cost responsibilities required to interconnect the Large Generating Facilities that are subjects of the PPAs and ESAs PNM seeks approval for in this case.

[1] Effective December 5, 2017, Facebook, Inc. assigned its interest in the SSC to its wholly owned subsidiary Greater Kudu LLC and executed an unconditional and irrevocable parental guaranty to guarantee Greater Kudu's prompt payment of all sums due under the SSC.
[2] 17.9.551 NMAC ("Rule 551").

**Q. Please summarize the PPAs and ESAs PNM is seeking approval.**

**A.** PNM seeks approval of the following PPAs which are described fully in the direct testimony of PNM Witness Barnard:

1) Star Light PPA will sell the energy output from the 100 megawatt ("MW") Star Light Energy Center facility ("Star Light Solar") to PNM over a 20-year term;
2) Four-Mile Mesa PPA will sell the output from the 100 MW 4-Mile facility ("4-Mile Solar") to PNM over a 20-year term;
3) Windy Lane PPA will sell the output from the 90 MW Windy Lane facility ("Windy Lane Solar") to PNM over a 20-year term;
4) Star Light ESA will sell the energy storage capacity from the 100 MW, 400 megawatt-hour ("MWh") Star Light Energy Center facility ("Star Light Storage") to PNM over a 20-year term;
5) Four-Mile Mesa ESA will sell the energy storage capacity from the 100 MW, 400 MWh 4-Mile facility ("4-Mile Storage") to PNM over a 20-year term; and
6) Windy Lane ESA will sell the energy storage capacity from the 68 MW, 272 MWh Windy Lane facility ("Windy Lane Storage") to PNM over a 20-year term.

**Q. Are there any terms you will use in your testimony that you would like to define now?**

**A.** Yes. It is necessary to identify PNM's Open Access Transmission Tariff ("OATT") which defines the terms established by FERC that govern the facilities necessary

for interconnection and transmission service associated with generation facilities interconnected to PNM's transmission system. All FERC regulated utilities that own, control, or operate transmission are required to have an OATT. The OATT is approved by FERC and provides rates and terms that determine how a utility runs its transmission business.

**Q. Is PNM's OATT publicly accessible?**

**A.** Yes. The complete OATT is available on PNM's Open Access Same-Time Information System website at http://www.oatioasis.com/pnm/index.html. Attachment N to the OATT, Large Generator Interconnection Procedures ("LGIP") describes the procedures that PNM must follow to interconnect Large Generating Facilities to its transmission system. Capitalized terms referenced in this testimony not defined herein are defined by the LGIP. The LGIP includes the standard Large Generator Interconnection Agreement ("LGIA"), which is the agreement that PNM enters into with Interconnection Customers that provides the terms, conditions, and costs applicable to the interconnection.

**Q. Which OATT defined terms will you use in your testimony?**

**A.** LGIA; Surplus Interconnection Agreement ("SIA"); Interconnection Customer's Interconnection Facilities ("ICIF"); Transmission Provider's Interconnection Facilities ("TPIF"); and Station Network Upgrades and Transmission System Network Upgrades.

**Q. Has PNM executed LGIAs for the facilities included in the Application?**

**A.** Yes, PNM has executed an LGIA for the Four Mile Mesa facilities on September 20, 2021, and Star Light facilities on July 30, 2024.

**Q. Has PNM executed SIAs for the facilities included in the Application?**

**A.** No, PNM has not yet executed an SIA for the Windy Lane facilities. The execution of this agreement is anticipated no later than June 30, 2025. Note that PNM has the existing signed LGIA with Casa Mesa wind under which the SIA for Windy Lane will exist.

**Q. Does PNM's construction of the transmission facilities you describe below depend on Commission approval of the PPAs or ESAs?**

**A.** No, PNM has an obligation to construct the transmission facilities under the LGIA given the obligations between PNM, as a FERC regulated Transmission Provider and Transmission Owner, and the Interconnection Customer, provided the Interconnection Customer has given Notice to Proceed and provided a proper form of financial security to PNM. This process is governed by FERC and independent of whether the Commission approves the PPAs and ESAs.

## II. RULE 551 REQUIREMENTS

**Q. Please describe the transmission costs PNM will incur or pay to receive the purchased power pursuant to the three PPAs and three ESAs (17.9.551.8 (D)(3) NMAC).**

A. Based on the facilities study for each of the projects, PNM estimates the costs to be:

1) Star Light PPA and ESA

The TPIF costs required to interconnect this project were estimated in 2023 to be $289,208. The station costs are estimated to be $1,380,619. This project had estimated Network Upgrade costs; but after notice to proceed was given and the project was reevaluated, the need for the Cluster 13 Central sub-cluster Network Upgrades was deemed unnecessary to interconnect the Star Light facilities.

2) Four Mile PPA and ESA

The TPIF costs required to interconnect this project were estimated in 2021 to be $1,295,656. The station Network Upgrades were estimated to be $27,494,254, but this estimate assumed interconnection into San Juan North station. Subsequently, a material modification study in 2023 located the facility behind a shared gen-tie with San Juan Solar IA-PNM-2017-13. This eliminated the need to build-out San Juan North with eight additional breakers. Cost estimates are not completed as a part of a material modification request because the purpose of that study is to determine the impact the change might have on other interconnection customers but makes no guarantee it would not have impact on cost or schedule of the project itself. It is

expected that the total TPIF would be very similar in scope to Windy Lane which is also sharing a gen-tie with an existing 345 kV generator interconnection. This cost estimate is $3,334,067.

3) Windy Lane PPA and ESA

The TPIF costs required to interconnect this surplus interconnection were estimated in 2025 to be $3,334,067. This estimate was completed during the facilities study portion of the surplus interconnection study. Station upgrades are not part of surplus interconnection service as surplus uses existing station equipment only.

**Q. Is it appropriate to consider the estimated Network Upgrades as being exclusively associated with the PPAs and ESAs?**

**A.** Yes. The station Network Upgrades were defined in the previous questions. There are no transmission network upgrades associated with the projects beyond station Network Upgrades to add an additional terminal to an already existing substation. These Network Upgrades only add facilities required to interconnect into the existing station and would not be associated with any other project.

## III. GENERAL DESCRIPTION OF PNM'S LARGE GENERATOR INTERCONNECTION PROCESS

**Q. What is the process required to interconnect a new generation facility to the PNM transmission system?**

**A.** An Interconnection Customer applies to interconnect through the LGIP process. PNM Transmission Planning performs an in-depth technical analysis of the project

providing estimated transmission upgrades and costs required to interconnect. At the conclusion of this process, an LGIA is executed memorializing the project specifications and study results. The Interconnection Customer then markets their project through various competitive processes to utility companies or in this case a large network customer. After selection through the bid process, the Interconnection Customer gives Notice to Proceed (NTP) to PNM, pays requisite securities, and begins the final design and engineering procurement and construction (EPC) of the project.

**Q. Is PNM required to enter into an LGIA with an interconnection customer regardless of whether PNM purchases the power from the generator?**

**A.** Yes. One of the purposes of the OATT is to provide open, non-discriminatory access to the transmission system for Interconnection Customers that comply with the LGIA process regardless of who they may eventually sell their power to. As a public utility owning, controlling, and operating its transmission system, PNM is federally required to comply with these regulatory requirements to provide such generation interconnection services. PNM is also, therefore, required to construct all necessary station Network Upgrades and TPIF to interconnect all Large Generating Facilities provided the Interconnection Customer complies with the terms of the LGIP. FERC Order 2003 requires Transmission Providers to follow a formal standardized process to study potential interconnectors. To ensure non-discriminatory access to the transmission system, this process must be

independent from evaluations by the Transmission Provider of its own potential generation resources.

**Q. Who is responsible for the costs of the transmission facilities?**

**A.** The Interconnection Customer to the LGIA is responsible for the costs of the TPIF required for their interconnection. The cost of the Network Upgrades, including station network upgrades, are recovered in base rates.

## IV. DESCRIPTION OF THE INTERCONNECTION FACILITIES AND NETWORK UPGRADES REQUIRED FOR THE PPAS AND ESAS

**Q. Please describe Star Light Solar and BESS.**

**A.** Star Light Solar PPA and ESA is a hybrid solar photovoltaic ("PV") generation facility with a net output of 100 MW co-located with a 100 MW 4-hour battery energy storage system ("BESS") interconnecting into the existing Sun Ranch 115 kV substation located along I-25 around mile marker 200 bordering nearby Los Lunas, New Mexico and Belen, New Mexico in Valencia County. A map showing the location of Star Light solar is included in PNM Witness Barnard's Exhibit GBB-3.

**Q. Please describe Four Mile Mesa Solar and BESS.**

**A.** Four Mile Mesa Solar PPA and ESA is a solar PV generation facility with a net output of 100 MW co-located with a 100 MW 4-hour BESS interconnecting into the existing San Juan 345 kV substation located near the San Juan coal mine north

of Waterflow, NM. A map showing the location of Four Mile Mesa solar is included in PNM Exhibit GBB-2

**Q. Please describe Windy Lane Solar and BESS.**

**A.** Windy Lane Solar PPA and ESA is a hybrid solar PV generation facility with a net output of 90 MW co-located with a 68 MW 4-hour BESS interconnecting behind a shared POI with an existing wind generating facility known as Casa Mesa. Casa Mesa is located North of PNM 345 kV substation Taiban Mesa which is the POI of the project. Taiban Mesa is located in a very rural location along NM-252 14 miles northeast of Fort Sumner, New Mexico the county seat of De Baca County, where the project is located. A map showing the location of Windy Lane Solar is included in PNM Exhibit GBB-4.

**Q. Please identify the interconnection facilities required to interconnect each of the PPA projects.**

**A.** Star Light requires the addition of one breaker at Sun Ranch to create the required termination at Sun Ranch. Both Four Mile Mesa and Windy Lane are interconnecting behind existing interconnections at San Juan Solar and Casa Mesa wind respectively.

**Q. Will PNM notify the Commission prior to proceeding with the interconnection facilities for each of these projects?**

**A.** Yes. 17.5.440.9 NMAC requires such notification. PNM will submit the required filing in a timely manner.

**Q. Does interconnection of the ESA projects require additional facilities?**

**A.** None beyond those required to interconnect the PPA portion of each project.

**Q. Are transmission upgrades required for the ESA projects?**

**A.** No.

**Q. Please identify the interconnection facilities required to interconnect the ESA projects**.

**A.** All the ESAs are interconnecting to the Interconnection Customer facilities behind a shared gen-tie with the PPA portion of each project.

**Q. What is the cost identified in the LGIA to interconnect the ESA projects?**

**A.** The costs are included with the PPA portion of each project; these costs were identified earlier in my testimony.

**Q. Will PNM notify the Commission prior to proceeding with the interconnection facilities for the ESA projects?**

**A.** Yes. PNM will submit timely notice in accordance with 17.5.440.9 NMAC.

## V. OTHER MATTERS

**Q. What are the estimated costs of on-going operations and maintenance of the transmission facilities outlined herein?**

**A.** Annual operations and maintenance costs are roughly estimated to be under $2,000 using the 0.1% rule-of-thumb multiplier to the capital cost of the incremental facility addition of a single breaker at Sun Ranch.

**Q. Are the costs of the transmission facilities required to interconnect the large generating facilities that are the subject of the PPAs and ESA reasonable?**

**A.** Yes. The costs were determined through the Interconnection Studies in accordance with the FERC-approved OATT. PNM is obligated to incur the costs to construct the facilities necessary to interconnect the transmission facilities regardless of whether the PPA and ESA in this Filing are approved.

## VI. CONCLUSION

**Q. Does this complete your direct testimony?**

**A.** Yes.

*GCG#533861*

Resume of Stephen Jenkins

# PNM Exhibit SJ-1

Is contained in the following 1 page.

# *Stephen L Jenkins*

## Professional Experience

***Public Service Company of New Mexico (2022-)*** Transmission Planning Manager

- Lead transmission planning team of 7 and various consultants through 10- and 20-year transmission planning studies, generation interconnection process, FERC regulatory reforms of the open access transmission tariff (OATT), and liaison for technical interactions with developers.
- Manage subject matter experts on regulatory standards covering topics such as modeling, transmission planning coordination, interconnection process, system restoration, and facility ratings.
- Leverage power system modeling packages including GE PSLF, TARA and PSCAD to model, analyze, predict, and optimize the performance and behavior of transmission level grid design and planning. Lead development of new tools like the FERC 2023 heatmap, GSAT, THCT, and more.
- Researcher and active, regular presenter at NATF, NERC, IEEE, and EPRI industry meetings. Key areas of interest include renewable energy integration, datacenter load modeling, power system dynamics, power electronics, and inverter-based resource modeling.

***Meta Platforms, Inc (2020-2022)*** Electrical Subject Matter Expert – Senior

- Leader of electrical infrastructure systems and equipment spanning from 115 kV substation down to 120 V commercial office space.
- Responsible for electrical systems for substation, conventional hyper-scale data center in building 3, and integration of new technologies for cold storage data center in building 4.
- Account manager for 5-year ABB maintenance contract and $10 million budget which covered all electrical systems except for UPS at the data center.
- Hands-on troubleshooting, repair, and maintenance of electrical equipment as well as management and oversight of 3rd party contractors and consultants acting in support of operations requirements.
- Coordination and scheduling of contractor and site crews through in-house developed project management and scheduling software.
- Author processes, procedures and reporting metrics including switching procedures, lock out tag out safety procedures, arc flash studies.
- On-site lead for root-cause analysis activities in system protection and utility transmission service. Performed root-cause analysis for voltage sag event that tripped over-current protection, commissioning failure on substation transformer caused by incorrect metering transformer tap ratio, and communications failure of fiber channels between substation switch gear and PNM.
- Provide training to Critical Facility Engineers on electrical equipment and procedures. Qualification training to allow these crews to work on electrical systems during shift work.

***El Paso Electric Company (2015-2020)*** System Operations Engineer – Staff

- Resolve system issues through both real time and planned power flow studies with GE PSLF, EMS Network Applications, and Dispatcher Training Simulator on GE-Alstom EMS.
- Perform daily evaluations of the power system to forecast and prevent issues in real time in support of NERC TOP-001. Served as Subject Matter Expert in 2018 audit for TOP-001.
- Build team processes from ground up to support of new TOP-001-4 compliance in 2017 starting alone in 2017 and ending off with a team of 4 in 2020.
- Develop and use tools to monitor dynamic system conditions in real time to prevent overloads on the loss of the most severe single contingency.
- Draft and review standard operating procedures to include industry best practices and address new concerns and standards in the industry.
- Ensure that the company meet requirements of industry standards (such as NERC BAL and TOP)

## Education Background

***Bachelor of Science in Electrical Engineering*** May 13th, 2017
New Mexico State University in Las Cruces, NM

## Certifications

***Professional Engineer (New Mexico)*** Earned: June 15th, 2022
New Mexico Board of Licensure for Professional Engineers and Professional Surveyors. License: #27906

GCG #533191v2

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

| | | |
|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO.47 AND AMENDED RIDER NO. 49** | ) | **Case No. 25 -00048-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO** | ) | |

**AFFIDAVIT**

STATE OF NEW MEXICO )
) ss
COUNTY OF BERNALILLO )

**STEPHEN JENKINS, Manager of Transmission Planning Engineering, Public Service Company of New Mexico,** upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Stephen Jenkins,** and it is true and accurate based on my own personal knowledge and belief.

DATED this 13th day of June, 2025.

/s/ Stephen Jenkins Stephen L Jenkins, PE 2025.06.13 09:26:38 -06'00'

**STEPHEN JENKINS**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

| | |
|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO. 47 AND AMENDED RIDER NO. 49** | **Case No. 25-00048-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO,** | |
| **Applicant.** | |

**DIRECT TESTIMONY**

**OF**

**MICHAEL J. SETTLAGE**

**June 13, 2025**

**NMPRC CASE NO. 25-00____-UT**
**INDEX TO THE DIRECT TESTIMONY OF MICHAEL J. SETTLAGE**

**WITNESS FOR**
**PUBLIC SERVICE COMPANY OF NEW MEXICO**


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PNM EXHIBIT MJS-1 Resume of Michael J. Settlage

AFFIDAVIT

**DIRECT TESTIMONY OF**
**MICHAEL J. SETTLAGE**
**NMPRC CASE NO. 25-00____-UT**

## I. INTRODUCTION AND PURPOSE

**Q. Please state your name, title, and business address.**

A. My name is Michael J. Settlage. I am a Pricing Principal for Public Service Company of New Mexico ("PNM" or "Company"). My business address is 414 Silver Ave SW, Albuquerque, New Mexico 87102.

**Q. Please summarize your educational background and professional qualifications.**

A. PNM Exhibit MJS-1 describes my educational and professional qualifications.

**Q. Have you previously testified in regulatory proceedings?**

A. Yes. The cases in which I have testified are identified in PNM Exhibit MJS-1.

**Q. What is the purpose of your direct testimony?**

A. The purpose of my testimony is to support PNM's Application in this proceeding. In support of PNM's Application, my testimony describes certain aspects of the Third Amended and Restated Special Services Contract ("Restated SSC"); with Greater Kudu, LLC or the "Customer", specifically, it:

1. Describes the proposed modifications to the Contribution to Production Charge for System Supplied Energy[1] ("CTP") rate in the Second Amended

[1] This rate was referred to as "Contribution to Production Charge for System Supplied Energy" in the original Rate No. 36B. In the Restated SSC and its exhibits, the original rate is referred to as "Original Contribution to Production Component" and the new rate going forward is referred to as the "Contribution to Production Component."

and Restated Special Service Contract ("Current SSC") approved in Case No. 18-00269-UT, which has been modified under the Restated SSC to more clearly demonstrate that additional renewable resources procured for the Customer and the associated tariffs to serve the Customer together will have No Net Adverse Impact[2];

2. Describes the proposed modifications to the Green Energy Rider No. 47;
3. Explains the reasons for and impact of the proposed amended tariff for Production Cost Allocation Rider No. 49;
4. Describes the proposed amended Special Services Rate – Renewable Energy Resources Rate Schedule 36B, and
5. Describes the changes in the Restated SSC that impact the Rates and Riders referenced above.

PNM Witness Aguirre describes the proposed changes to the Restated SSC in general. I detail the changes in the Restated SSC relating to Rate No. 36B and Rider Nos 47 and 49.

## II. MODIFICATIONS TO SPECIAL SERVICE CONTRACT

**Q. What modifications to the Current SSC is PNM proposing?**

**A.** PNM seeks to amend the Current SSC:

[2] Restated SSC at § 1.1

- To update definitions for Production Revenue Requirement, Production Revenue Requirement Offset, and Production Revenue Requirement Offset Subsidy to clarify the calculation of CTP.
- To update definitions for SSC Resource, SSC Energy Resource, and SSC Storage Resource to support the introduction of SSC Storage Resources.
- To add a definition for SSC Storage Resource Capacity Value Factor, which is used to calculate the CTP.
- To clarify the calculation of CTP described in Exhibit D1.
- To describe SSC Resource curtailment impacts.
- To clarify and simplify the determination of No Net Adverse Impact.

## III. IMPACTS ON CONTRIBUTION TO PRODUCTION

**Q. What is the CTP Component in the Restated SSC?**

**A.** The CTP Component is a rate element on the Customer's monthly energy bill designed to ensure that any Rate Schedule 36B customer pays their allocated share of production costs as determined in a rate case. In the context of a base rate case, the CTP is calculated based on the Production Revenue Requirement, which is the estimated amount of generation related costs that would have been allocated to the Customer absent their SSC Resources, less the Production Revenue Requirement Offset, which represents the value of the SSC Resources as accounted for toward the generation related costs. The CTP Component is the difference between the Production Revenue Requirement ($) and the Production Revenue Requirement

Offset ($) divided by the sum of Customer's annual billable demand (kW). The CTP is never negative.

The CTP Component is updated and approved by the New Mexico Public Regulation Commission ("PRC" or "Commission") as part of a general rate case. The CTP Component is described in Exhibit D1 to the SSC.

**Q. How is PNM proposing to modify the CTP charge in the Revised SSC?**

**A.** The existing method previously approved to calculate the CTP charge is not changed but has been clarified and updated to reflect the reduced dependance on PNM's other generation resources resulting from the addition of SSC Resources and to describe how SSC Energy Resource curtailments are accounted for in the calculation of the Production Revenue Requirement Offset ("PRRO").

The CTP methodology recognizes the hours when the SSC Resources contribute to peak loads as defined in PNM's cost allocation process for generation related costs. In the Revised SSC, this calculation is referred to as the Coincident Peak Methodology, defined in Exhibit D1.

**Q. What are the proposed changes to the Coincident Peak Production Methodology described in Exhibit D1 for SSC Storage Resources?**

**A**. In Exhibit D1 of the Revised SSC, the Coincident Peak Production Method uses a specific capacity value defined as the SSC Storage Resources Capacity Value Factor, for all SSC Storage Resources. PNM controls SSC Storage Resources and operates them for the overall benefit of the PNM system; and therefore, these

resources are available to PNM during the hours used in the Coincident Peak Production Methodology. Thus, because PNM has dispatch control of these resources, the PRRO in the CTP calculation uses the SSC Storage Resource Capacity Value Factor.

**Q. How is the PRRO calculation in the CTP affected by SSC Storage Resources?**

**A.** In the PRRO calculation (which is a component of the CTP), the value that SSC Storage Resources provide is calculated as the SSC Storage Capacity Value Factor agreed upon by the parties in the Restated SSC, multiplied by the resource nameplate capacity. As defined in the Revised SSC, the SSC Storage Capacity Value Factor is 78% for all SSC Storage Resources filed for NMPRC approval prior to December 31, 2025; and this value shall endure as a fixed value for the life of each applicable SSC Storage Resource.

For example, an SSC Storage Resource with a 100 MW nameplate capacity would provide a capacity of 78 MW (100 MW x 78%) for use in the PRRO calculation for as long as the ESA for the associated SSC Storage Resource is in effect.

**Q. Are there proposed changes to the Coincident Peak Production Methodology described in Exhibit D1 for SSC Energy Resources?**

**A**. No. The contributions of SSC Energy Resources to the Coincident Peak Production Methodology shall remain the same as currently approved.

**Q. Can you provide a more detailed example CTP Component calculation based on the Restated SSC?**

**A.** Yes. Please see the example CTP Component calculation in PNM Table MJS-1.

**PNM Table MJS-1**
**Example Contribution to Production Component Calculation**

| Line | **Production Revenue Requirement Calculation** | Production Allocation |
|---|---|---|
| 1 | Total system retail Production Revenue Requirement ($) | $ 375,000,000 |
| 2 | Sum of all system retail Production-related Coincident Peak Demand Loads (kW) | 12,500,000 |
| 3 | Retail capacity rate (line 1 / line 2) ($/kW) | 30.00 |
| 4 | The sum of Customer's Coincident Peak Billable Demand **Loads (kW)** | 1,200,000 |
| 5 | **Production Revenue Requirement (line 3 x line 4)** | $ 36,000,000 |
| | **Production Revenue Requirement Offset Calculation** | |
| 6 | Total system retail Production Revenue Requirement ($) | $ 375,000,000 |
| 7 | Sum of all system retail Production-related Coincident Peak Demand Loads (kW) | 12,500,000 |
| 8 | Retail capacity rate (line 1 / line 2) ($/kW) | 30.00 |
| 9 | The sum of Coincident Peak **Production** for all SSC Resources | 1,400,000 |
| 10 | **Production Revenue Requirement Offset (line 8 x line 9)** | $ 42,000,000 |
| | **Contribution to Production Component Calculation** | |
| 11 | **Production Revenue Requirement (line 5) ($)** | $ 36,000,000 |
| 12 | **The Production Revenue Requirement Offset (line 10) ($)** | $ 42,000,000 |
| 13 | Revenue (excess) or deficiency (line 11 - line 12) ($) | $ (6,000,000) |
| 14 | The sum of Customer's annual billable demands(kW) | 3,900,000 |
| 15 | Calculated revenue offset rate (line 13 / line 14) ($/kW) | (1.54) |
| 16 | **Contribution to Production Component (greater of zero and line 15)** | 0.00 |

Here, the example Production Revenue Requirement ("PRR") (line 5) is $36,000,000 and is less than the example Production Revenue Requirement Offset ("PRRO") (line 10) of $42,000,000 provided by the SSC Resources. This example results in a negative calculated revenue offset rate (line 15), and thus, the CTP Component (line 16) is set to zero.

As noted above, the Revised SSC describes how SSC Resources, including SSC Storage Resources and SSC Energy Resource curtailments, are used in the Coincident Peak Production (line 9) in Exhibit D1.

**Q. Will the Restated SSC CTP component, as approved in Case No. 18-00269-UT and revised in Case No. 22-00270-UT, to the Special Service Rate proposed in PNM's application affect any charges to the Customer or the rates of any of PNM's other customers prior to the effective date of rates approved by the Commission in PNM's next general rate case proceeding?**

**A.** No. The CTP calculation in the Restated SSC will be applied in general rate proceedings following Commission approval of this Restated SSC. Until then, there are no changes proposed in this application to the charges paid by the Customer or any of PNM's other customers.

**Q. Is PNM proposing to clarify the methodology used to calculate the PRRO in this case?**

**A.** Yes. The methodology to calculate the PRRO now specifies how SSC Storage Resources are treated in the PRRO calculation. It also specifies the treatment of certain SSC Resource curtailments.

## IV. SSC RESOURCE CURTAILMENTS

**Q. Do SSC Energy Resource curtailments factor into the CTP calculation?**

**A.** Yes, they can. SSC Energy Resource curtailments factor into the calculation of the PRRO which is used to calculate the CTP. The handling of SSC Energy Resource curtailments is dependent upon whether PNM owes compensation to the seller under the respective Third-Party SSC Energy Resource PPA or not. When PNM owes compensation to the seller, the SSC Energy Resource production includes the curtailed capacity in the calculation of the PRRO. In other words, in the case where an SSC Energy Resource is curtailed and PNM owes the seller compensation, PNM pays the seller for any curtailment charges, charges the 36B customer as if no curtailment had occurred, and provides the 36B customer with replacement RECs.

## V. MODIFICATIONS TO RATE NO. 36B, RIDER NO. 47, AND RIDER NO. 49

**Q. What modifications are proposed to Rate No. 36B?**

**A.** There are two modifications proposed to the language of Rate No. 36B.

1. Customer Eligibility items 1) and 5) on page 1 of the Rate have been updated to more clearly indicate that existing 36B customers are qualified to remain on the rate and that adding renewable or alternative capacity projects is sufficient to qualify for the Rate.
2. The phrase Monthly Rate was revised to Monthly Charge because some of the rate elements have differing denominators (per bill, per kW, per kWh)

and could not be simply added. The Monthly Charge explicitly calculates the same monthly dollar charge as was intended to be calculated by the Monthly Rate.

Changes to definition of curtailments in Section 8.1 of the SSC can impact the fuel cost adjustment charge applied to System Supplied Energy and the energy related non-fuel charge for system supplied energy. For curtailments in which PNM is obligated to pay compensation to the seller under a Third-Party PPA for such curtailment, PNM provides replacement energy to Customer at the applicable PPA rate, and this replacement energy is not subject to the Fuel Cost Adjustment applied to System Supplied Energy Charge or the Energy Related Non-Fuel Charge for system supplied energy.

**Q. What modifications are proposed to Rider No. 47?**

**A.** The proposed language of Rider No. 47 Customer Eligibility items 1) and 4) on page 1 of the Rider have been updated to more clearly indicate that existing 36B customers are qualified to remain on the rate and that the addition of sufficiently sized SSC Resources of any type is enough to qualify for the Rider.

The definition of SSC resources now includes SSC Storage Resources. The Schedule 36B customer shall pay the full cost of SSC Storage Resources as described in this Rider. SSC energy resource curtailments where PNM pays compensation for the curtailment to the seller are discussed below.

**Q. How do curtailments of SSC Energy Resources impact the amount the customer pays PNM for purchased power agreements ("PPA")?**

A. Curtailments of SSC Energy Resources are treated according to the terms of each respective PPA. Some SSC energy resource PPAs specify that PNM must pay compensation to the seller for certain curtailments. For these specific curtailments, the output of the SSC Energy Resource is curtailed, PNM supplies the Rate No. 36B customer with replacement RECs and energy and charges the Rate No. 36B customer as if no curtailment has occurred. PNM also pays any curtailment charges due to the seller per the terms of the applicable PPA. There are no changes related to any other curtailments.

**Q. Please generally explain the purpose of PNM's proposed Rider No. 49 Production Cost allocation rider.**

A. Rider No. 49 describes how the stipulated values of Rider No. 47 resources used in the CTP calculation of the test period of the general rate proceeding final order are compared to the actual performance of these same resources in test period once the test period used in the general rate proceeding has concluded. It describes how the Final Order CTP component, which may use stipulated values for some SSC Resources, is compared to a CTP that uses actual resource performance for resources that had stipulated values in the test period. It also describes the two rate elements necessary to collect any under recovery that could have occurred if the customer's Production Revenue Requirement is more than the customer's

Production Revenue Requirement Offset calculated using actual values for resources that were stipulated in the rate case.

**Q. Please describe how Rider No. 49 works.**

**A.** Rider No. 49 provides for a mechanism to recover any Deemed Under-Collected production costs from the Rate No. 36B customer. An Under-Collection of the customer's allocated production costs will be deemed to occur if the CTP calculated using Test Period actual values for SSC Energy Resources for which a stipulated capacity value was used, is less than the generation-related costs allocated to Rate No. 36B as approved in the most recently approved PNM Rate Case.

**Q. How is this mechanism used?**

**A.** This comparison is performed within four months of the end of the test period in a general rate case. PNM compares the CTP rate element approved in the most recent rate case which used stipulated values for certain SSC resources, to a CTP rate that is calculated based on actual capacity values from the Test Period for those same SSC resources.

If a Deemed Under-Collection of the customer's allocated production costs occurs, two rate elements will be calculated.

A Reset Rate charge is calculated to recover the ongoing deemed under collection. This charge will be applied to the customer's monthly bill and will remain in effect until rates from the next approved rate case go into effect.

An Interim Period Charge is calculated to recover the deemed under collection that occurred during the time between the end of the Test Period and the effective date of the Reset Rate. This Charge is designed to recover the interim period under collection over six months and will be applied to the customer's monthly bills for six months.

**Q. Please provide an example of a Rider 49 True-Up calculation.**

**A.** PNM Table MJS-2 provides an illustrative example of a Rider 49 True-up calculation.

**PNM Table MJS-2**
**Example of Rider 49 Calculation**

| Line | **Production Revenue Requirement Calculation** | Approved Case Allocation | | Test Period Rider 49 Stipulated Actuals Allocation |
|---|---|---|---|---|
| 1 | Total system retail Production Revenue Requirement ($) | $ 270,000,000 | | $ 270,000,000 |
| 2 | Sum of all system retail Production-related **Coincident Peak Demand Loads** (kW) | 2,000,000 | | 2,000,000 |
| 3 | Retail capacity rate (line 1 / line 2) ($/kW) | 135.00 | | 135.00 |
| 4 | The sum of **Customer's** Coincident Peak Billable **Demand Loads (kW)** | 230,000 | | 230,000 |
| 5 | **Production Revenue Requirement (line 3 x line 4)** | $ 31,050,000 | | $ 31,050,000 |
| | **Production Revenue Requirement Offset Calculation** | | | |
| 6 | Total system retail Production Revenue Requirement ($) (line 1) | $ 270,000,000 | | $ 270,000,000 |
| 7 | Sum of all system retail Production-related **Coincident Peak Demand Loads** (kW) (line 2) | 2,000,000 | | 2,000,000 |
| 8 | Retail capacity rate (line 1 / line 2) ($/kW) (line 3) | 135.00 | | 135.00 |
| 9 | The sum of Coincident Peak **Production** for all **SSC Resources (kW)** | 330,000 | | 310,000 |
| 10 | **Production Revenue Requirement Offset (line 8 x line 9)** | $ 44,550,000 | | $ 41,850,000 |
| | **Contribution to Production Component Calculation** | | | |
| 11 | **Production Revenue Requirement (line 5) ($)** | $ 31,050,000 | | $ 31,050,000 |
| 12 | **The Production Revenue Requirement Offset (line 10) ($)** | $ 44,550,000 | | $ 41,850,000 |
| 13 | Revenue (excess) or deficiency (line 11 - line 12) ($) | $ (13,500,000) | | $ (10,800,000) |

| | | | |
|---|---|---|---|
| 14 | The sum of Customer's annual billable demands(kW) | 3,900,000 | 3,900,000 |
| 15 | Calculated revenue offset rate (line 13 / line 14) ($/kW) | (3.46) | (2.77) |
| 16 | **Contribution to Production Component (greater of zero and line 15)** | 0.00 | **0.00** |

**Q. If a Deemed Under-Collection of production costs from the Rate No. 36B customer occurs, does that mean that the Rate No. 36B customer's allocated Production costs are being subsidized by other customer classes?**

A. No. Rider No. 49 ensures that this cannot happen. The two rate elements calculated in Rider No. 49 ensure that the Deemed Under-Collection of production costs is recovered from the Rate No. 36B customer, and no other customers are impacted. Any revenues collected from the Customer due to the Deemed Under-Collection, including the Reset Rate and the Interim Period Charge will be booked to a regulatory liability and shall be returned to the Company's retail customers in the next general rate case where ratemaking treatment shall be determined by the Commission.

**Q. Has PNM performed any Rider No. 49 true ups?**

A. Yes, once. The first Rate Case approved and effective after Rider 49 was approved was Case No. 22-00270-UT. The test period for Case No. 22-00270-UT was calendar year 2024. PNM performed the true-up calculation in March 2025. This calculation demonstrated that the PRRO using actual value for those values that were stipulated exceeded the PRR, thus the Rider 49 rate element remains at $0.00.

## VI. NO NET ADVERSE IMPACT

**Q. How will the amended Rate No. 36B and Rate Rider Nos. 47 and 49 impact other customer classes?**

A. The amended Rate No. 36B will not impact other customer classes. The proposed changes to Rate No. 36B clarify that existing 36B customer remains eligible for the Rate Requirements, clarify the monthly charge, the application of the Fuel Cost Adjustment, and the application of the energy related non-fuel charge. None of these modifications impact other customer classes. Rate No. 36B, Rider No 47, and Rider No 49 along with the Restated SSC ensure that there is no impact to other customers.

**Q. How do the modifications to the Restated SSC ensure the additional resources procured for the Customer and the associated tariffs to service the Customer will have No Net Adverse Impact?**

A. Section 5.1.2 describes the Determination of No Net Adverse Impact. There is No Net Adverse Impact if the Test Period Revenue projected from Rate No. 36B customer during the Company's Test Period equals or exceeds (a) the separate class Cost-Based Allocated Revenue Requirement Company is required to undertake for the Rate No. 36B customer in each general rate proceeding minus (b) the Production Revenue Requirement Offset Subsidy.

This calculation of Production Revenue Requirement Offset is described in SSC Exhibit D1. An illustrative example of the demonstration of No Net Adverse Impact calculation is provided in PNM Table MJS-3.

**PNM Table MJS-3**
**Example Demonstration of No Net Adverse Impact**

| Line | Cost Based Production Revenue Requirement | Generation Allocation |
|---|---|---|
| 1 | Cost-Based Allocated Revenue Requirement for 36B Customer | $31,050,000 |
| | **Production Revenue Requirement Offset Calculation** | |
| 2 | Total system retail Production Revenue Requirement ($) (line 1) | $270,000,000 |
| 3 | Sum of all system retail Production-related **Coincident Peak Demand Loads** (kW) (line 2) | 2,000,000 |
| 4 | Retail capacity rate (line 1 / line 2) ($/kW) (line 3) | 135.00 |
| 5 | The sum of Coincident Peak **Production** for all **SSC Resources** | 330,000 |
| 6 | **Production Revenue Requirement Offset (line 4 x line 5)** | $44,550,000 |
| 7 | **Production Revenue Requirement Offset Subsidy ($) (Line 6 - Line 1)** | $13,500,000 |
| 8 | **Test Period Revenue projected from Customer ($)** | $ 21,000,000 |
| | **NNAI Determination** | |
| 9 | Is Test Period Revenue projected from Customer >= (Cost Based Allocated Revenue Requirement minus Production Revenue Requirement Offset Subsidy)?<br><br>Is line 8 >= line 1 – line 7?<br>Is $21,000,000 >= $31,050,000 - $13,500,000?<br>Yes. $21,000,000 > $17,550,000. | Yes. Therefore, there is No Net Adverse Impact. |

In this example, the Test Period Revenue projected from the Rate No. 36B customer exceeds the Cost Based Revenue Requirement less the Production Revenue Requirement Offset Subsidy. Thus, there is no Net Adverse Impact. PNM Witness Aguirre also provides a formulaic explanation around the No Net Adverse Impact standard as proposed in the Revised SSC.

**Q. How does Rider No. 49 ensure there is NNAI?**

**A.** Rider No. 49 offers an additional safeguard to other customers. It recalculates the PRRO based on actual values for any SSC energy resources which used stipulated values in the rate case test period. If a Deemed Under-Collection occurs, the Deemed Under-Collection is collected from the Rate No. 36B customer through the two rate elements described in this rider.

## VII. CONCLUSION

**Q. Please summarize your testimony.**

**A.** In my testimony, I describe how changes to the SSC impact the calculation of charges to the Rate No. 36B customer. I also describe the calculation to demonstrate that the Rate No. 36B customer meets the No Net Adverse Impact determination. Additionally, I describe how SSC Storage resources are treated in the Contribution to Production calculation and how curtailments of SSC Energy Resources are handled. I also describe changes in Rider Nos. 47 and 49.

**Q. Does this conclude your testimony?**

**A.** Yes, it does.

*GCG#533862*

Resume of Michael J. Settlage

# PNM Exhibit MJS-1

Is contained in the following 3 pages.

**Michael J. Settlage**
**EDUCATIONAL AND PROFESSIONAL SUMMARY**

Name: Michael J. Settlage

Address: PNM Resources, Inc.
MS 1105
414 Silver SW, Albuquerque, NM 87102

Position: Principal, Pricing and Regulatory Service
Public Service Company of New Mexico (PNM)

Education: Bachelor of Science- Electrical and Computer Engineering
Clemson University, 1984

Master of Science- Electrical and Computer Engineering
Specialization in Power Engineering
Clemson University, 1985

Employment:
- *Pricing Principal/Lead Pricing Analyst*, PNM (02/2019-Present);
- *Manager of Grid Modernization,* PowerServices, Inc. (07/2017-02/2019);
- *Director of Engineering and Project Management,* Nexgrid, LLC. (01/2017-07/2017);
- *Operations Manager,* ElectriCities of NC. (01/2011-01/2017);
- *Owner, ConciseConcept, LLC. (01/2007-11/2013);*
- *Various Positions,* Carolina Power & Light/ Progress Energy/ Progress Ventures/ Arclight Energy Marketing. (01/1986-06/2007);
- *Research Associate,* Clemson University, Clemson University Electric Power Research Association (CUEPRA). (08/1983-12/1985).

Previous Testimony:

| **Proceeding** | **Body** | **Docket** |
|---|---|---|
| Adjustment of Base Rates for Fuel Costs of Carolina Power & Light Company | Public Service Commission of South Carolina | 1995-1-E |

| | | |
|---|---|---|
| Annual Review of Carolina Power and Light Base Rates for Fuel Costs | Public Service Commission of South Carolina | 1998-1-E |
| Testimony Supporting Reconciliation of PNM's 2018 Energy Efficiency Incentive | NMPRC | 17-00076-UT |
| Testimony in Support of PNM's 2020 Energy Efficiency Incentive | NMPRC | 17-00076-UT |
| PNM's Application for Approval of PNM Solar Direct Voluntary Renewable Energy Program | NMPRC | 19-00158-UT |
| PNM's Renewable Energy Act Plan for 2020 | NMPRC | 19-00159-UT |
| PNM's Consolidated Application for Abandonment of San Juan Generating Station | NMPRC | 19-00195-UT |
| PNM's Application for Approval of Energy Efficiency 2021 Plan | NMPRC | 20-00087-UT |
| PNM's Application for Approval of Demand Response Plan | NMPRC | 20-00218-UT |
| PNM's Application for Four Corners Abandonment And Financing Approval | NMPRC | 21-00017-UT |
| PNM's Application for Facebook PPA and ESA 3 | NMPRC | 21-00031-UT |
| PNM's Application for Abandonment of PVNGS Leases and Approval of Replacement Resources | NMPRC | 21-00038-UT |

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|---|---|---|
| PNM's Application for Community Solar | NMPRC | 22-00020-UT |
| PNM's Application for Authorization to Implement Grid Modernization | NMPRC | 22-00058-UT |
| PNM's Implementation of Community Solar Riders 56, 57 and Rate No 37 | NMPRC | 23-00071-UT |

*GCG#527497v4*

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

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|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO.47 AND AMENDED RIDER NO. 49** | ) | **Case No. 25 -00048-UT** |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO** | ) | |

**AFFIDAVIT**

STATE OF NEW MEXICO )
) ss
COUNTY OF BERNALILLO )

**MICHAEL J. SETTLAGE, Pricing Principal, Public Service Company of New Mexico,** upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Michael J. Settlage,** and it is true and accurate based on my own personal knowledge and belief.

DATED this 13th day of June, 2025.

/s/ Michael J Settlage
Digitally signed by Michael J Settlage
Date: 2025.06.13 10:33:13 -06'00'

**MICHAEL J. SETTLAGE**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

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|---|---|---|
| **IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF AN AMENDED SPECIAL SERVICE CONTRACT WITH GREATER KUDU LLC, THREE PURCHASED POWER AGREEMENTS AND THREE ENERGY STORAGE AGREEMENTS PURSUANT TO 17.9.551 NMAC, AMENDED RATE NO. 36B, AMENDED RIDER NO.47 AND AMENDED RIDER NO. 49** | ) | |
| **PUBLIC SERVICE COMPANY OF NEW MEXICO** | ) | **Case No. 25 -00048-UT** |

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the **Public Service Company of New Mexico's Application for Approval of an Amended Special Contract with Greater Kudo, LLC, Three Purchased Power Agreements and Three Energy Storage Agreements Pursuant to 17.9.551 NMAC, an Amended Rate No. 36B, Amended Rider No. 47 and Rider No. 49** was emailed to parties listed below on June 13, 2025:

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Dated this 13th day of June, 2025.

By: /s/ *Lisa Contreras*
Lisa Contreras, Senior Project Manager
PNM Regulatory Policy & Case Management
Public Service Company of New Mexico

GCG#533847