

PUBLIC SERVICE COMPANY OF NEW MEXICO

ORIGINAL SAMPLE FORM NO. 106

PNM SOLAR DIRECT SERVICE AGREEMENT – GOVERNMENTAL ENTITIES

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PNM Solar Direct Service Agreement – Governmental Entities

EFFECTIVE

March 31, 2021

Replaced by NMPRC

By: Commission Final Order

Case No. 19-00158-UT

Advice Notice No. 576

/s/Mark Fenton

Mark Fenton

Executive Director, Regulatory Policy & Case Management

GCG#527701

PNM SOLAR DIRECTSM
SERVICE AGREEMENT—GOVERNMENTAL ENTITIES

This PNM Solar DirectSM (“**PNM Solar DirectSM**” or “**Program**”) Service Agreement (“**Agreement**”) is entered into this [●] day of [●], 20[●] (“**Execution Date**”), by and between [●], a [●] (“**Customer**”) and Public Service Company of New Mexico, a New Mexico corporation (“**PNM**”) (each a “**Party**” and collectively the “**Parties**”).

RECITALS

PNM Solar DirectSM offers eligible customers the option to purchase solar energy in addition to the system solar energy customers receive as part of their electrical service from PNM.

Eligibility to participate in PNM Solar DirectSM and applicable rates are set forth in original Rider No. 50, Voluntary Solar Renewable Energy Program - PNM Solar DirectSM for Governmental and Large Commercial Customers (“**Rider No. 50**”), together with any successor tariff, and the PNM Solar DirectSM filing approved by the New Mexico Public Regulation Commission (“**Commission**”) in Case No. [●].

Customer is qualified to take service under Rider No. 50 and desires to subscribe to PNM Solar DirectSM on the terms set forth in this Agreement, subject to the terms of Rider No. 50, to demonstrate Customer’s commitment to the development of renewable energy projects and to help meet Customer’s sustainability and renewable energy goals. Unless otherwise defined in this Agreement, all capitalized terms have the meanings ascribed to them in Rider No. 50.

AGREEMENT

In consideration of the promises and obligations reflected in the covenants, terms and conditions set forth in this Agreement, all of which together provide the consideration for this Agreement, PNM and Customer, each intending to be legally bound, consistent with the orders, rules, rate schedules and precedents established by the Commission, hereby agree as follows:

1. Renewable Energy Subscription. Subject to the terms of Rider No. 50, PNM rules and rate schedules for electric service, and this Agreement, the amount of capacity contracted for Customer under this Agreement is [●] kW (“**Renewable Energy Subscription**”), as shown in Customer’s Notice of Intent (“**NOI**”), subject to the conditions stated in that NOI, and attached hereto as Exhibit A. The Renewable Energy Subscription represents a portion of the production from the solar photovoltaic facilities under a contract with PNM to supply energy to the Program (collectively, “**Solar Facility**”).

2. Renewable Energy Production. The renewable production available to fill Customer’s Renewable Energy Subscription will be based upon the energy produced from the Solar Facility. Customer’s Renewable Energy Subscription will determine the portion of the Solar Facility production that is used to calculate Customer’s charges and credits under Rider No. 50. PNM and through its Solar Facility contractor shall provide the Customer an annual forecast in monthly units of the amount of energy to be produced and delivered to the program in the next year. See Exhibit

B to this Agreement. Customer expressly assumes the risk that the Solar Facility may not generate energy sufficient to completely cover the forecasted production.

3. Conditions Precedent. The obligations of the Parties under this Agreement shall be conditioned upon (i) the receipt of a final order or other regulatory determination from the Commission that PNM may procure renewable energy and associated RECs pursuant to the Power Purchase Agreement—Jicarilla Solar 2 Facility dated May 30, 2019, between PNM and Jicarilla Solar 2 LLC (“**PPA**”); (ii) approval of PNM Solar DirectSM; (iii) approval of any associated new or amended PNM rate or rate rider, and (iv) approval of the form of PNM Solar DirectSM Service Agreement—Governmental Entities (“**Form Agreement**”) (collectively, “**Requested Actions**”). In particular, but without limitation:

a. PNM agrees to use commercially reasonable efforts to request and obtain Commission Approval of the Requested Actions, and Customer agrees to cooperate with and assist PNM in these efforts as PNM may reasonably request.

b. Commission Approval shall be considered received when the Commission issues a final written order that is not contested or is no longer subject to appeal 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 that directly impact Customer’s rates and service under Rider No. 50, provided that each of Customer and PNM agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, “**Commission Approval**”).

c. If the Commission disapproves the PPA or Rider No. 50, then this Agreement shall automatically terminate ten (10) days after the date of such action by the Commission 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.

d. If any Commission Approval is issued as described in clause (b)(ii) above, then the Parties shall meet and confer no later than fifteen (15) days after the date of the Commission Approval order regarding whether PNM or Customer wishes to amend this Agreement to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification contained in the Commission Approval. If the Parties are unable to mutually agree on any amendments to this Agreement to address such Commission Approval order, then this Agreement 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 PNM and Customer mutually agree in writing within such ten (10) Day period that this Agreement remain in effect.

e. If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by March 31, 2020 (“**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 Agreement 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.

f. For the avoidance of doubt, this Agreement shall terminate and be of no further force or effect, with no further obligation or liability of either Party to the other Party if the PPA is terminated due to a Commission Approval order that is unsatisfactory to PNM and Contractor.

4. Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of fifteen (15) years after the Solar Facility's commercial operation date, as determined by PNM ("**Term**"), unless and until terminated earlier pursuant to the provisions of this Agreement. "**Effective Date**" means the date of commercial operation of the Solar Facility, which is expected to be March 31, 2021. The date on which this Agreement terminates due to expiration of the Term is referred to as the "**Expiration Date.**"

5. Construction Updates; Liquidated Damages.

a. On and after the start of construction on the Solar Facility and through the commercial operation date, PNM will provide Customer copies of monthly construction updates submitted to PNM by Contractor under the PPA.

b. On and after the commercial operation date of the Solar Facility and through the end of the Term, PNM will give Customer, upon Customer's request, reasonable access to the Solar Facility's performance and production metrics.

c. Customer shall be entitled to its proportionate share of any liquidated damages paid to PNM by the Contractor under the PPA due to Contractor's failure to meet the expected commercial operation date for the Solar Facility or failure to meet any annual performance or availability guarantees established in the PPA.

6. Payment and RECs.

a. *Contract Rider Rate.* Customer agrees to pay PNM the Contract Rider Rate, which is calculated on a kWh basis consistent with the terms and conditions provided in Rider No. 50 and this Agreement.

b. *Monthly Billing.* PNM will issue to Customer a separate bill for the most-recent calendar month's charges and credits, aggregated for all Customer's monthly Total Energy Usage, as defined below. All charges and other terms and conditions as provided for under the Customer's applicable standard service classification(s) will continue to be based on actual metered energy use during Customer's normal billing cycle. Monthly charges and credits to Customer for participation in the Program will consist of the following:

i. Charges.

(1) PNM Solar DirectSM Solar Production Charges – PNM will charge Customer, on a monthly basis, applicable Solar Production Charges, which shall be calculated as the number of kWh of renewable energy produced by the Solar Facility ("**Renewable Energy**")

Production”) multiplied by the percentage of Renewable Energy Production allocated to Customer (**“Renewable Allocation Factor”**) multiplied by the cost per kWh assessed to Customer based on the levelized cost of the Solar Facility (**“Contract Rider Rate”**) (i.e., PNM Solar DirectSM Solar Production Charge = Renewable Energy Production * Renewable Allocation Factor [●%] * Contract Rider Rate set forth in Rider No. 50 (\$0.02173/kWh)). PNM will calculate the Renewable Energy Production for each month at the end of the month. Customer’s Renewable Allocation Factor and the Contract Rider Rate will remain constant during the term of this Agreement. If in any given month the Renewable Energy Production times the Renewable Allocation Factor exceeds Customer’s Total Energy Usage, all applicable charges and credits will be billed and subject to the rates in effect at that time and will not be carried over to the subsequent month. As used in this Agreement, **“Total Energy Usage”** means all of Customer’s aggregated monthly energy usage subject to service under Rider No. 50.

(2) **Administrative Charge** – PNM will assess a monthly charge to recover Customer’s share of the upfront costs associated with the Program. PNM will recover those costs with a carrying charge over the Term. The charge will be at the rate set forth in Rider No. 50 (**“Administrative Charge”**). The Administrative Charge will remain the same over the Term.

(3) **Western Renewable Energy Generation Information System (“WREGIS”) Fee** – PNM will charge Customer the fee charged by WREGIS to PNM to retire RECs on behalf of Customer or, if Customer has asked to retire its RECs pursuant to Section 6.c, to transfer RECs to Customer’s WREGIS account for retirement by Customer. As of the Execution Date, the fee charged by WREGIS for each such transaction is \$0.000005/kWh (**“WREGIS Fee”**). PNM will bill Customer in an amount equal to the WREGIS Fee multiplied by the Renewable Energy Production multiplied by the Renewable Allocation Factor. This pass-through charge will be included on Customer’s monthly bill for participation in the Program and may change from time to time when WREGIS updates its fee matrix. PNM will serve Customer with a copy of any advice notice filed by PNM that contains an adjustment to Rate No. 50 to collect the WREGIS Fee.

ii. **PNM Solar DirectSM Rider Credits** – PNM will apply the following credits to Customer’s monthly bill for participation in the Program:

(1) a **Fuel and Purchased Power Credit**, which will be calculated as the Renewable Energy Production multiplied by the Renewable Allocation Factor multiplied by the average fuel and purchased power cost per the Fuel and Purchased Power Cost Rate (**“FPPCAC”**) that is paid by Customer (i.e., Fuel and Purchased Power Cost Credit = Renewable Energy Production * Renewable Allocation Factor [●%] * average fuel and purchased power cost paid by Customer). The FPPCAC is subject to periodic modification. PNM will serve Customer with a copy of any applicable advice notice or compliance filing made by PNM related to the FPPCAC rate;

(2) a **Non-Fuel Variable Cost Credit**, which will be calculated as Renewable Energy Production multiplied by the Renewable Allocation Factor multiplied by the system average Non-Fuel Variable Cost approved in the most-recent PNM rate case (i.e., Non-Fuel Variable Cost Credit = Renewable Energy Production * Renewable Allocation Factor [●%] * (average Non-Fuel Variable Cost Credit rate established in PNM’s latest rate case)). The average Non-Fuel Variable Cost Credit rate will be subject to change in future PNM rate cases; and

(3) a Renewable Portfolio Standard Cost Credit, which will be calculated as Renewable Energy Production multiplied by the Renewable Allocation Factor multiplied by the applicable rate approved in PNM's Rider No. 36, Renewable Energy Rider, or any successor or additional renewable energy rider. Rider No. 36 is reconciled and adjusted annually to reflect Commission-approved procurements, changes in revenue requirements, and other relevant factors.

c. *REC Retirement.* Customer acknowledges and agrees that all RECs associated with the renewable energy purchased by Customer under PNM Solar DirectSM must be retired. PNM agrees to retire the RECs produced from Customer's share of the Solar Facility on behalf of Customer. PNM will provide monthly statements of the number of RECs retired by PNM on Customer's behalf and provide an annual statement by March 31 of each calendar year of such retired RECs from the preceding calendar year. Alternatively, at Customer's written request on or before the beginning of the Term, PNM will transfer RECs to Customer's WREGIS account for retirement by Customer. PNM does not guarantee the production of energy or the corresponding quantity of RECs generated from the resources supplying the Solar Facility. As used in this Agreement, "**REC**" means a certificate or other record, in a format approved by the Commission, that represents all the environmental attributes from one megawatt-hour of electricity generation from the Solar Facility and certified as such by WREGIS.

7. Force Majeure.

a. *Customer Force Majeure.* If Customer is unable to sustain its load to support Customer's Renewable Energy Subscription due to events or circumstances beyond its reasonable control that are not the result of Customer's fault or negligence ("**Customer Force Majeure Event**"), and provided Customer (i) gives notice of such Customer Force Majeure Event to PNM as promptly as is practical after its occurrence and (ii) exercises due diligence to minimize the effect and duration of such Customer Force Majeure Event, Customer may suspend its participation in PNM Solar DirectSM and its payment obligations under this Agreement to the extent and for the duration of the Customer Force Majeure Event. In no event, however, may a Customer Force Majeure Event continue for a period longer than one hundred eighty (180) days. At the conclusion of the Customer Force Majeure Event or expiration of the 180-day period, whichever occurs first, Customer will resume participation in PNM Solar DirectSM and will be obligated to pay the Contract Rider Rate.

b. *Contractor Force Majeure.* If, in a given month, one or more facilities supplying the Solar Facility fails to produce output, or its production is reduced, due to a Force Majeure Event as provided in the PPA ("**Contractor Force Majeure Event**"), PNM will notify Customer of such Contractor Force Majeure Event within a commercially reasonable period of time. In the case of reduced production, PNM will subsequently reduce Customer's credits, Renewable Energy Subscription, PNM Solar DirectSM Rider Charge, and RECs for its share of the Solar Facility production on a pro-rata basis with all other participating customers for the duration of the Contractor Force Majeure Event. Except as set forth in Sections 7.a and 7.b of this Agreement, Customer's credit and PNM Solar DirectSM Rider Charge will not be subject to reduction. In no event will any delay or failure of performance caused by a Contractor Force Majeure Event extend this Agreement beyond

its stated Term. If any delay or failure of performance caused by a Contractor Force Majeure Event continues for an uninterrupted period of one hundred eighty (180) days from its inception and the PPA is terminated, this Agreement will automatically terminate, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

8. Default and Cure.

a. *Customer Default and Cure; Termination of Program Participation.*

i. Customer may elect to terminate this Agreement and service under Rider No. 50 prior to the Expiration Date by providing PNM written notice at least sixty (60) days before the desired early termination date (“**Early Termination Effective Date**”). In the event of an early termination for any reason other than for a PNM Default under Section 8.b, Customer will be responsible for the net cost of the remaining renewable energy that was to be delivered to the Customer during the remainder of the Term. The net cost will be based on (1) the time remaining in the Term, (2) the forecast annual renewable energy to be generated by the Solar Facility,¹ (3) Customer’s Renewable Allocation Factor, and (4) the difference between the Contract Rider Rate and the forecast fuel cost during the Term, but in no event less than zero dollars, plus Customer’s share of the Administrative Charge for the number of months remaining in the Service Agreement (collectively “**Early Termination Fee**”). Customer will not be obligated to pay the Early Termination Fee if another eligible customer fully subscribes to Customer’s Renewable Energy Subscription before the Early Termination Effective Date. PNM may assist Customer in identifying other eligible customers to the extent PNM is required to do so under applicable law. In addition to the obligation to pay the Early Termination Fee, Customer shall retain any obligation it incurs prior to the Early Termination Effective Date. Customer shall pay the Early Termination Fee in full within fifteen (15) days of the Early Termination Effective Date. Delinquent payment shall be subject to interest at then-current rates authorized by the Commission. If Customer later wishes to resume service under Rider No. 50, Customer will be required to reapply for a new Renewable Energy Subscription, and participation shall be subject to eligibility requirements and available capacity.

ii. PNM may terminate this Agreement before the end of the Term if changes in Customer’s annual Total Energy Usage during the Term cause Customer to fail to meet eligibility criteria under Rider No. 50 or due to a material default by Customer under this agreement, including but not limited to failure to make payments when due. In the event of early termination under this Section 8.a.ii by PNM, Customer will be obligated to pay the Early Termination Fee as set forth in Section 8.a.

iii. Customer is in default of this Agreement only if it fails to comply with any material obligation, agreement, term or provision of this Agreement and such failure continues for more than thirty (30) days after receipt of written notice of such failure from PNM; provided, however, that if such default cannot reasonably be cured within thirty (30) days and if Customer is proceeding promptly and with due diligence in curing the default, the cure period shall be extended for a period of time, such extension not to exceed sixty (60) days.

¹ PNM and Customer shall agree on the forecasted annual renewable energy to be generated by the Solar Facility during the remainder of the term by using the data contained in the forecast of Solar Facility renewable energy production for the fifteen-year term of this Agreement. See Exhibit B.

b. *PNM Default and Cure.* PNM is in default of this Agreement only in the event of the following (each a “PNM Default”):

i. PNM fails to comply with any material obligation, agreement, term or provision of this Agreement and such failure continues for more than thirty (30) days after receipt of written notice of such failure from Customer; provided, however, that if such default cannot reasonably be cured within thirty (30) days and if PNM is proceeding promptly and with due diligence in curing the default, the cure period shall be extended for a period of time, such extension not to exceed sixty (60) days;

ii. PNM voluntarily terminates PNM Solar DirectSM except that it shall not be a PNM Default if termination is due to the fault of Customer or any other PNM customer participating in the Program; or

iii. PNM fails to seek, voluntarily forfeits, loses or otherwise fails to maintain any regulatory approvals or authorities from the Commission necessary to implement and manage PNM Solar DirectSM in accordance with the terms and conditions of this Agreement. However, it shall not be a PNM Default if the Commission or any entity having jurisdiction over PNM or PNM Solar DirectSM issues an order requiring PNM to discontinue PNM Solar DirectSM, causing material changes to the Program or otherwise preventing or prohibiting PNM from fulfilling its obligations under this Agreement and, in addition, such action is not due to PNM’s actions or inactions.

9. Remedies. Any event of default may be waived at the non-defaulting Party’s option. Upon the failure of a Party to cure a default after notice from the other Party and expiration of the agreed cure periods, the non-defaulting Party may, subject to the terms of this Agreement:

a. File suit and seek all damages or other remedies including injunctive relief allowed by law or equity.

b. Terminate this Agreement by declaring the Early Termination Date, which will be no less than thirty (30) and no more than sixty (60) days after the notice of default and opportunity to cure, upon which this Agreement will terminate. Upon the designation of the Early Termination Date, the non-defaulting Party will have the right to immediately suspend performance under this Agreement. Neither Party will have the right to terminate this Agreement except as provided for upon the occurrence of a Customer Default or a PNM Default, as applicable and as described above or as may be otherwise explicitly provided for in this Agreement.

c. Withhold any payments due until the default or breach is cured and the non-defaulting Party has received from the defaulting Party the dollar amounts necessary to compensate the non-defaulting Party for all damages and attorneys’ fees and expenses allowed pursuant to this Agreement or by law or equity.

The failure of the non-defaulting Party to pursue any remedy provided for in this Agreement will never be ratification of or acquiescence by the non-defaulting Party of the defaulting Party’s

default or breach. The remedies in this section are intended to be cumulative. None shall be in lieu of any other. A Party may pursue none, one, all or any combination of the remedies provided for in this section.

10. Terms and Conditions. The terms and conditions of Rider No. 50, as approved by the Commission, are incorporated by reference in this Agreement. In the event of a conflict between Rider No. 50 and this Agreement, Rider No. 50 will control to the extent of the conflict. PNM reserves the right to modify this Agreement during the Term to incorporate changes to Rider No. 50 as approved or amended by the Commission. This Agreement remains subject to changes and modifications required from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. PNM will give Customer notice in accordance with the Commission’s requirements if PNM asks the Commission to take action that could cause a change in terms of this Agreement or Rider No. 50.

11. Transfer and Assignment. Customer may transfer the Renewable Energy Subscription, in whole or in part, subject to all eligibility requirements, including customer usage and the requirements of this Section 11. In no event may Customer transfer all or part of the Renewable Energy Subscription to any individual or entity that is not a customer of PNM.

a. *Transfer to Another Eligible Customer.* Customer may transfer all or a portion of its Renewable Energy Subscription to another eligible Customer that is either (i) not receiving service under Rider No. 50, and/or (ii) the Renewable Energy Production times its Renewable Allocation Factor does not exceed the new customer’s annual Total Energy Usage established at the time of the proposed transfer. All such proposed transfers shall be subject to prior written approval from PNM as set forth in this Section 11. The customer taking the transfer of the Renewable Energy Subscription (“**Transferee**”) must demonstrate that its electric usage meets the eligibility criteria and will accommodate the transfer of the Renewable Energy Subscription. PNM shall have the sole discretion to approve, deny or modify a transfer request to meet the requirements of the Program, however, PNM shall not unreasonably withhold its approval of a transfer request.

b. *Transfer Notice and Application.* At least sixty (60) days before the proposed transfer effective date:

i. Customer shall provide written notice to PNM of its request to transfer all or a portion of its Renewable Energy Subscription. The notice must include:

- (1) Customer’s name and mailing address;
- (2) the current service location address;
- (3) the Transferee’s name and service address;
- (4) the portion of the Renewable Energy Subscription proposed to be transferred (“**Transfer Request**”); and
- (5) the proposed effective date of the proposed transfer.

ii. Transferee shall submit an application in the form required by PNM that will include confirmation of Transferee's intent to acquire all or a portion of Customer's Renewable Energy Subscription and the proposed effective date of the proposed transfer.

c. *Completion of Transfer.* PNM will verify the eligibility of the Transferee. If PNM approves the Transfer Request, it will give Customer notice thereof; provided, however, such transfer will not be complete until (i) Customer, Transferee, and PNM execute an Assignment and Assumption Agreement, in the case of assignment of this Agreement and the full Renewable Energy Subscription, or (ii) if the Transfer Request is for a portion of the Renewable Energy Subscription, Transferee and PNM execute a new PNM Solar DirectSM Service Agreement for the portion to be transferred, and Transferee, PNM and Customer execute all other documents that PNM may require in connection with the Transfer Request. In addition, no transfer will be effective until the start of the first billing period following PNM approval. Upon any transfer of a portion of the Renewable Energy Subscription, Customer will surrender all right, title and interest in and to that portion of the Renewable Energy Subscription and, with respect to assignment of the entire Renewable Energy Subscription, this Agreement. No assignment will extend the Term of this Agreement.

12. Customer Representations. Customer represents and warrants to PNM as follows:

a. *Purposes of Program Participation.* Customer's participation in the Program is not for investment purposes, including any capital appreciation or other profit.

b. *No Ownership Rights.* Customer understands and agrees that it is not obtaining any ownership right, title or interest in or to any portion of the underlying projects in the Solar Facility or individual solar panels, nor any capacity rights with respect thereto, and that it will not have access or control over any portion of the Solar Facility.

c. *Factors Beyond PNM Control.* Customer understands that the benefits of its Renewable Energy Subscription depend significantly on factors beyond the control of PNM, including but not limited to weather and the availability of sunlight necessary to produce solar energy, limitations in the solar technology used at the Solar Project, and the effect of changes in law or regulations.

d. *Due Diligence.* Each Party has been advised in this matter by its own legal counsel and consultants and has conducted its own due diligence with respect to the terms and conditions of this Agreement.

13. Disclaimer of Warranties. CUSTOMER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS STATED IN THIS AGREEMENT, THE RENEWABLE ENERGY SUBSCRIPTIONS ARE MADE AVAILABLE "AS-IS," AND WITHOUT WARRANTY OF ANY KIND. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT NONE OF PNM, ITS PARENT COMPANY OR AFFILIATES, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OR THE OWNERS OF ANY PROJECTS IN THE SOLAR FACILITY IS PROVIDING ANY REPRESENTATION, WARRANTY, GUARANTY OR COMMITMENT WITH RESPECT TO (I) THE ACTUAL PRODUCTION, IF ANY, FROM THE

SOLAR FACILITY, (II) THE NUMBER OF RECS, IF ANY, THAT WILL BE RECEIVED BY CUSTOMER UNDER THIS AGREEMENT, OR (III) THE AMOUNT OF COST SAVINGS, IF ANY, CUSTOMER MAY REALIZE BY PARTICIPATING IN THE SOLAR DIRECTSM PROGRAM. ANY WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. Trade Secrets; Confidential Information.

PNM may provide this Agreement, and any information provided to PNM in support of this Agreement, to the Commission. Any Customer information provided to PNM by Customer that is a trade secret or confidential must be marked as Trade Secret or Confidential, as applicable, but PNM cannot guarantee that the Commission will not require disclosure of such information.

15. Dispute Resolution.

a. *Mediation.* If any dispute between the Parties arises under this Agreement that 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 as set forth in Section 15.c. Disputes that are not resolved by mediation within ninety (90) days of referral to mediation shall be resolved as provided in Sections 15.b and 15.c; provided, however, nothing in this Section 15 shall prevent either Party from seeking resolution by the Commission of any dispute arising under this Agreement that is within its jurisdiction or prevent either Party from seeking any remedy by the Commission within its jurisdiction through any procedure within the Commission's authority.

b. *Arbitrable Disputes.* The Parties acknowledge that arbitration is not available for disputes involving matters within Commission 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 Commission jurisdiction, the parties shall seek a determination from the Commission 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 Agreement that is within the Commission's jurisdiction.

c. *Claims Outside the Commission's Jurisdiction.* If the dispute involves a claim that is outside the Commission's jurisdiction and the Parties are unable to resolve a dispute regarding such matters through mediation or any other remedies within the Commission's jurisdiction, then the Parties may agree to arbitration. Failing such an agreement to arbitrate, then either Party may bring an action only in the federal or state courts of New Mexico. 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. Any agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico.

d. *Continued Performance.* The Parties agree that they will continue to diligently perform their obligations pursuant to this Agreement during the pendency of any dispute.

16. Notice. All notices, requests, consents, claims, demands, waivers and other communications hereunder must be in writing and will be deemed to have been given (i) when delivered by hand; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or electronic transmission (including by e-mail) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient and provided in each case the recipient has acknowledged receipt, or (iv) on the third (3rd) Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

Unless a Party has designated a different officer or address for itself by written notice to the other hereunder, such communications will be sent to the respective Party as follows:

If to PNM:

Public Service Company of New Mexico
[Title]
414 Silver Avenue SW
Albuquerque, NM 87107
Email: [●]

If to Customer:

[Customer Name]
Attention:
[Address Line 1]
[Address Line 2]
[City], [State] [Zip Code]
Email: [●]

17. No Third-Party Benefit. Nothing in this Agreement will be construed to create any duty, obligation or liability of PNM to any Person not a party to this Agreement.

18. Waiver. As a voluntary participant in PNM Solar DirectSM, Customer hereby irrevocably waives all rights to any billing adjustments or other relief arising from a claim that Customer's service would be or would have been at a lower cost had Customer not participated in the Program.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Electronic or pdf signatures will have the same effect as an original signature.

20. Governing Law. The validity, interpretation and performance of this Agreement, and each of its provisions, will be governed by the laws of the State of New Mexico without giving effect to principles of conflicts of law that would require the application of laws of another jurisdiction. The Parties agree that the state and federal courts, as applicable, of the State of New Mexico will have exclusive jurisdiction for the resolution of disputes under this Agreement and the Parties

consent to such jurisdiction.

21. Amendments. This Agreement may only be amended by a written document duly executed by PNM and Producer or their successors or permitted assigns. Notwithstanding the foregoing, this Agreement shall at all times be subject to such changes and modifications as shall be ordered from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. PNM will give Customer notice in accordance with the Commission's requirements if and when the Commission is requested to take action that could cause a change in the terms of this Agreement.

22. Appropriations; Special Fund. *[Use either of the following paragraphs, as appropriate]*

Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the [Governing Body of Customer] making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the [Governing Body], this Agreement may be terminated at the end of Customer's then current Fiscal Year upon written notice given by Customer to PNM. All payment obligations of Customer and all of its interest in this Agreement will cease upon the date of termination. The [Governing Body's] decision as to whether sufficient appropriations are available shall be accepted by PNM and shall be final, and such event shall not constitute an event of default, provided that: (a) Customer agrees to include in its budget request appropriations sufficient to cover Customer's obligations under this Agreement; and (b) Customer agrees it will not use non-appropriations as a means of terminating this Agreement in order to acquire functionally equivalent products or services from a third party.

[OR]

Any and all future charges and fees payable by Customer under this Agreement shall be paid exclusively from a segregated fund specifically established by customer for that purpose. Upon execution of this Agreement, Customer shall establish and maintain throughout the Term a dedicated fund ("Special Fund"). All future charges, fees and other sums that become due under this Agreement shall be payable exclusively from this Special Fund, which customer shall dedicate to this Agreement.

23. Audits and Inspections. At any time during normal business hours and upon reasonable notice to PNM, there shall be made available to Customer for examination PNM's records with respect to all matters covered by this Agreement. PNM shall permit Customer to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, and other data relating to all matters covered by this Agreement.

24. Off-Taker List. Should the Contractor under the PPA with PNM display signage associated with the Solar Facility, Customer agrees that its name and logo or seal may be included in any list of partial off-takers of the Solar Facility's production.

25. Entire Agreement. This Agreement contains the entire understanding between PNM and Customer regarding the subject matter hereof and supersedes any prior or contemporaneous agreement or understanding between PNM and Customer. Neither PNM nor Customer shall be bound by or liable for any statement, representation, promise, inducement, or understanding of any nature not set forth or provided for herein. This Agreement is binding upon and shall inure to the

benefit of the respective successors and permitted assigns of the Parties.

[Signature(s) are on following page(s)]

IN WITNESS WHEREOF, Customer and PNM have caused this Agreement to be executed by their duly authorized representatives as of the Execution Date.

PUBLIC SERVICE COMPANY OF NEW MEXICO

[CUSTOMER]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

[Customer's NOI Submission to be attached]

**NOTICE OF INTENT
PNM SOLAR DIRECTSM**

Submission of this completed Notice of Intent (“**NOI**”) constitutes notice that the Customer identified below will participate in the Public Service Company of New Mexico (“**PNM**”) Solar DirectSM program (“**PNM Solar DirectSM**”) and subscribe to the number of kW identified in Item 4 below, subject only to New Mexico Public Regulation Commission (“**Commission**”) approval of PNM Solar DirectSM. Submission of this NOI also constitutes notice that the certifying official has read and understands the eligibility conditions of the PNM Solar DirectSM Customer Agreement and Rate Rider No. 50.

1. Customer Name: _____

2. Principal Business Address: _____

3. Contact Information:

Name: _____

Address: _____

Phone: _____

Email: _____

4. Renewable Energy Subscription: Customer hereby agrees that Customer will subscribe to an aggregate of [●] kW upon issuance by the Commission of a final, non-appealable order approving all of the following, substantially as filed in PNM’s application to the NMPRC: (a) PNM Solar DirectSM, (b) any new or amended PNM rate or rate rider associated with PNM Solar DirectSM, (c) the form of PNM Solar DirectSM Special Service Agreement—Governmental Entities, and (d) any waivers requested by PNM in the same filing as PNM’s application for approval of PNM Solar DirectSM.

5. Certification: I certify that this NOI represents the Customer’s firm commitment to participate in PNM Solar DirectSM at the Renewable Energy Subscription level set forth in item 4 above.

Signature: _____

Print Name: _____

Title: _____

Email: _____

Date: _____

EXHIBIT B

ANNUAL GENERATION FORECAST (MWhs)

			2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036
			yr1	yr2	yr3	yr4	yr5	yr6	yr7	yr8	yr9	yr10	yr11	yr12	yr13	yr14	yr15	
Degradation			3% first Commercial Operating Year: 0.7% every year thereafter															
50MW																		
Base																		
January	7527	50%		3763.5	3650.6	3625.0	3599.7	3574.5	3549.4	3524.6	3499.9	3475.4	3451.1	3426.9	3403.0	3379.1	3355.5	3332.0
February	8746	50%		4373.0	4241.8	4212.1	4182.6	4153.4	4124.3	4095.4	4066.7	4038.3	4010.0	3981.9	3954.1	3926.4	3898.9	3871.6
March	9961	50%		4980.5	4831.1	4797.3	4763.7	4730.3	4697.2	4664.3	4631.7	4599.3	4567.1	4535.1	4503.4	4471.8	4440.5	4409.5
April	13450	50%	6725	6523.3	6477.6	6432.2	6387.2	6342.5	6298.1	6254.0	6210.2	6166.8	6123.6	6080.7	6038.2	5995.9	5953.9	
May	15176	50%	7588	7360.4	7308.8	7257.7	7206.9	7156.4	7106.3	7056.6	7007.2	6958.1	6909.4	6861.1	6813.0	6765.3	6718.0	
June	16336	50%	8168	7923.0	7867.5	7812.4	7757.7	7703.4	7649.5	7596.0	7542.8	7490.0	7437.6	7385.5	7333.8	7282.5	7231.5	
July	14304	50%	7152	6937.4	6888.9	6840.7	6792.8	6745.2	6698.0	6651.1	6604.6	6558.3	6512.4	6466.8	6421.6	6376.6	6332.0	
August	13893	50%	6946.5	6738.1	6690.9	6644.1	6597.6	6551.4	6505.5	6460.0	6414.8	6369.9	6325.3	6281.0	6237.1	6193.4	6150.0	
September	12012	50%	6006	5825.8	5785.0	5744.5	5704.3	5664.4	5624.8	5585.4	5546.3	5507.5	5468.9	5430.6	5392.6	5354.9	5317.4	
October	10125	50%	5062.5	4910.6	4876.3	4842.1	4808.2	4774.6	4741.1	4708.0	4675.0	4642.3	4609.8	4577.5	4545.5	4513.6	4482.1	
November	7392	50%	3696	3585.1	3560.0	3535.1	3510.4	3485.8	3461.4	3437.2	3413.1	3389.2	3365.5	3341.9	3318.5	3295.3	3272.2	
December	7464	50%	3732	3620.0	3594.7	3569.5	3544.6	3519.7	3495.1	3470.6	3446.3	3422.2	3398.3	3374.5	3350.9	3327.4	3304.1	
	136386		55076	66540.7	65773.2	65312.8	64855.6	64401.7	63950.8	63503.2	63058.7	62617.3	62178.9	61743.7	61311.5	60882.3	60456.1	11613.1