

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)
PUBLIC SERVICE COMPANY OF NEW MEXICO)
FOR APPROVAL OF PNM SOLAR DIRECT)
VOLUNTARY RENEWABLE ENERGY PROGRAM,)
POWER PURCHASE AGREEMENT, AND) Case No. 19-00__-UT
ADVICE NOTICE NOS. 560 AND 561,)
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Applicant.)
_____)

DIRECT TESTIMONY

OF

THOMAS G. FALLGREN

MAY 31, 2019

NMPRC CASE NO. 19-00____-UT
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WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO

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AFFIDAVIT

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

A. My name is Thomas G. Fallgren. I am Vice President of Generation for Public Service Company of New Mexico ("PNM"). My business address is Public Service Company of New Mexico, 2401 Aztec Road NE, Albuquerque, New Mexico 87107.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL QUALIFICATIONS.

A. I have provided oversight of PNM Generation since November 2016 in the roles of Managing Director and, as of May 2017, Vice President of Generation. From July 2013 to November 2016, I was the Plant Manager for the San Juan Generating Station. Before coming to PNM, I worked for subsidiaries of Xcel Energy as Plant Manager of the Tolk/Plant X Complex, a two site complex consisting of two coal-fired units rated at 1,100 MW and four natural gas-fired steam plant units rated at 442 MW, and the Black Dog Generating Facility, a now-retired coal-fired generating station and a one-on-one combined cycle gas plant. Prior to that, I served in several management positions at the Sherburne County Generating Station, a three unit 2,238 MW coal-fired facility. I also have thirteen years of experience at the Monticello nuclear generating facility, where I was qualified as a Senior Reactor Operator. I have been a registered engineer in the State of Minnesota since 1994. I graduated with a Bachelor of Mechanical

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1 Engineering degree with High Distinction from the University of Minnesota. A
2 copy of my Educational and Professional Summary is attached as PNM Exhibit
3 TGF-1, which includes a list of cases in which I have testified before the New
4 Mexico Public Regulation Commission (“NMPRC” or “Commission”).

5
6 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

7 **A.** My testimony supports PNM’s request for approval of a long-term purchased
8 power agreement (“PPA”) with Jicarilla Solar 2 LLC (“Jicarilla 2 PPA”) for 50
9 MW of solar energy from the Jicarilla Solar 2 facility (“Jicarilla 2 Facility”) as the
10 source of energy for PNM Solar Direct, a new voluntary renewable energy
11 program for eligible government and commercial customers. Specifically, I
12 sponsor the Jicarilla 2 PPA, which is attached to my testimony as PNM Exhibit
13 TGF-2, and provide the following information required by 17.9.551 NMAC
14 (“Rule 551”):

- 15 1) a copy of the PPA (Rule 551.8(D)(1));
- 16 2) an explanation of the key terms and conditions of the PPA (Rule
17 551.8(D)(2));
- 18 3) a description of transmission costs PNM may incur or pay to receive the
19 purchased power (Rule 551.8(D)(3));
- 20 4) a general description of the facilities that will generate the purchased power
21 (Rule 551.8(D)(5));

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1 5) evidence that entering into the PPA is consistent with the provision of safe
2 and reliable electric service at the lowest reasonable cost (Rule
3 551.8(D)(6));

4 6) evidence that the PPA is consistent with PNM's most recent Commission-
5 accepted integrated resource plan (Rule 551.8(D)(8));

6 7) evidence whether a utility-owned generation resource could have been
7 constructed as an alternative to the PPA with greater benefit to ratepayers
8 (Rule 551.8(D)(9));

9 8) the methodology and criteria by which the PPA was selected (Rule
10 551.8(D)(10)); and

11 9) any other information or evidence that PNM believes will assist the
12 Commission in its review of the PPA (Rule 551.8(D)(11)).

13 I will also describe the complete process of PNM's Request for Proposals
14 ("RFP") that resulted in the PPA chosen for this project.

15
16 **Q. PLEASE PROVIDE SOME BACKGROUND ON JICARILLA SOLAR 2**
17 **LLC.**

18 **A.** Jicarilla Solar 2 LLC is owned by Hecate Energy NAF LLC ("Hecate") which is a
19 wholly owned subsidiary of Hecate Energy LLC. Hecate Energy LLC is a
20 privately owned company headquartered in Chicago that has developed 363 MW
21 of operating solar projects with more than 1 GW of solar and energy storage
22 projects under contract.
23

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1 Hecate is entering into a Joint Development Agreement with Primary Energy
2 (“Primary”) for the Jicarilla 2 Facility. Primary is also privately owned and is a
3 developer, owner and operator of generation facilities with combined fleet
4 capacity of 298 MW. Primary will be the operator of the Jicarilla 2 Facility,
5 although it may select a third-party operator at some time in the future.
6

7 **Q. IS PNM REQUIRED TO OBTAIN COMMISSION APPROVAL FOR THE**
8 **JICARILLA 2 PPA?**

9 **A.** Yes. Rule 551 requires that an electric utility obtain the Commission’s written
10 approval before becoming irrevocably bound under a long-term PPA, which is
11 defined as a PPA with a term of five years or more and for which the utility
12 intends to seek rate recovery from New Mexico retail customers. (Rule 551.7(E)
13 and 8(A)). The Jicarilla 2 PPA is for a term of 15 years. Rule 551 also requires
14 that a utility file at the Commission within thirty days after the execution of a long
15 term PPA an application for approval of the PPA. (Rule 551.8(B)).
16

17 **Q. HAS PNM COMPLIED WITH THESE PROVISIONS OF THE PPA**
18 **RULE?**

19 **A.** Yes. The Jicarilla 2 PPA was executed on May 30, 2019, within thirty days of the
20 filing of PNM’s Application in this case. Section 6.1 of the PPA provides that
21 PNM’s obligations under the PPA take effect only after Commission approval.
22

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1 **Q. WHAT STANDARDS DOES THE COMMISSION APPLY TO AN**
2 **APPLICATION FOR APPROVAL OF A LONG TERM PPA?**

3 **A.** Rule 551 does not explicitly state the standard an applicant must meet to obtain
4 approval of a long term PPA. However, in Case No. 15-00083-UT, involving an
5 application by Southwestern Public Service Co., the Commission held that the
6 standard was a “modified version of the ‘public convenience and necessity’
7 standard for CCNs.” Accordingly, to approve an application under Rule 551, the
8 Commission must find that the applicant has satisfied the informational
9 requirements of Rule 551.8 and that the agreement is needed, reasonable and in
10 the public interest. Recommended Decision, September 21, 2015, at 24. The
11 Commission went on to equate “public convenience and necessity” with “public
12 interest” and to equate “public interest” with “a net public benefit”. *Id.*

13
14 **Q. DOES PNM’S APPLICATION MEET THESE STANDARDS?**

15 **A.** Yes. PNM’s Application, including testimony and exhibits in support, satisfy all
16 informational and filing requirements of Rule 551.8. In addition, as I describe in
17 the following testimony, the PPA provides a net public benefit and is in the public
18 interest.

19
20 **Q. HOW DOES THE PPA SATISFY THE NET PUBLIC BENEFIT**
21 **REQUIREMENT?**

22 **A.** The purpose of the PPA is to meet the desire of certain governmental and large
23 commercial customers to supply their energy requirements with a much higher

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1 percentage of renewable resources than is generally available through PNM's
2 existing generation mix. In fact, some of these eligible customers desire to meet
3 100% of their load with renewable resources. By having these customers pay for
4 this PPA through PNM's proposed Rider No. 50, Voluntary Solar Renewable
5 Energy Program – PNM Solar Direct for Governmental and Large Commercial
6 Customers, PNM is able to meet the requirements of these eligible customers
7 without adversely impacting the rates or service of PNM's other non-participating
8 customers. At the same time, the PPA brings additional renewable resources to
9 PNM's system beyond what is required to meet the Renewable Portfolio Standard
10 ("RPS"). The PPA provides additional renewables to PNM's system, meets the
11 needs of the eligible customers, and does not adversely impact PNM's other
12 customers, which creates a net benefit. Therefore the PPA is in the public
13 interest.

14
15 **Q. ARE THERE OTHER BENEFITS TO NEW MEXICO FROM THE PPA?**

16 **A.** Yes. It is estimated by PPA provider Hecate Energy that the 50 MW Jicarilla 2
17 Facility will result in approximately \$50 to \$70 million in direct investment,
18 provide an expected \$1.5 million in lease payments to the Jicarilla Nation in lieu
19 of property taxes and provide more than 200 construction and operations jobs. In
20 addition to these economic benefits, there will be environmental benefits
21 associated with the solar generation. As previously stated, the new renewable
22 energy resources developed with this PPA are in addition to those required by the
23 RPS. This adds to the net public benefit.

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II. JICARILLA 2 PPA

**Q. WHAT IS THE TERM OF THE JICARILLA 2 PPA, INCLUDING ANY
OPTIONS TO EXTEND (RULE 551.8(D)(2)(A))?**

A. The Jicarilla 2 PPA provides that Jicarilla Solar 2 LLC will sell to PNM the energy output from the Jicarilla 2 Facility over a 15-year term. There are no options to extend the term beyond fifteen years. The fifteen year term begins on the Commercial Operation Date under the PPA, which is expected to be March 31, 2021. Commission approval of the PPA is a condition precedent to PNM's obligations under the PPA taking effect. The PPA is subject to early termination for specified reasons including Events of Default set forth in Article 12 of the PPA and discussed in more detail below.

**Q. WHAT IS THE NAMEPLATE CAPACITY OF THE JICARILLA 2
FACILITY AND THE AMOUNT OF ENERGY PER MONTH AND ANY
CONDITIONS REGARDING MINIMUM OR MAXIMUM ENERGY OR
CAPACITY MADE AVAILABLE OR REQUIRED TO BE PURCHASED
UNDER THE JICARILLA 2 PPA (RULE 551.8(D)(2)(B))?**

A. The nameplate capacity of the Jicarilla 2 Facility is approximately 50 MW and the project is expected to produce 130,000-140,000 MWh of energy per year. Under Section 8.1 of the Jicarilla 2 PPA, PNM is required to purchase net solar energy generated by the facility and delivered to PNM beginning on the Commercial Operation Date.

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1 **Q. PLEASE DESCRIBE THE PRICE PNM WILL PAY UNDER THE**
2 **JICARILLA 2 PPA INCLUDING WHEN CHARGES BEGIN, ANY PRICE**
3 **REOPENERS AND ANY PRICE ESCALATION PROVISIONS (RULE**
4 **551.8(D)(2)(C)).**

5 **A. The Solar Energy Output Payment Rate over the 15-year term of the PPA is**
6 \$21.73/MWh, which includes renewable energy certificates (“RECs”). This price
7 will remain fixed over the term of the PPA with no escalations and cannot be
8 reopened once the PPA has been approved by the Commission and is in effect.
9 Charges will begin on the Commercial Operation Date and PNM will purchase
10 test energy at the Test Energy Payment Rate, which is 50% of the Solar Energy
11 Output Payment Rate.

12

13 **Q. HOW WILL PNM RECOVER THE COST OF THE TEST ENERGY?**

14 **A. The test energy cost will flow through the fuel clause. This PPA is competitively**
15 priced and so it will not adversely impact PNM’s other customers to flow test
16 energy costs through the fuel clause.

17

18 **Q. DOES THE PPA OBLIGATE PNM TO PAY ANY FIXED OR VARIABLE**
19 **ADMINISTRATIVE COSTS, TRANSACTIONAL, OPERATION AND**
20 **MAINTENANCE COSTS, INCLUDING START-UP COSTS, TAXES,**
21 **INSURANCE, ENVIRONMENTAL OR RECLAMATION COSTS, OR**
22 **FUEL COSTS (RULE 551.8(D)(2)(D))?**

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1 **A.** No, under the Jicarilla 2 PPA, PNM does not pay any administrative costs,
2 transactional, or operation and maintenance costs.

3
4 **Q.** **PLEASE DESCRIBE THE PPA PROVISIONS RELATING TO NON-**
5 **PERFORMANCE BY JICARILLA SOLAR 2 LLC AND REMEDIES**
6 **PROVIDED (RULE 551.8(D)(2)(E)).**

7 **A.** Default by Jicarilla Solar 2 LLC is addressed in Article 12 of the PPA, including
8 the cure period for each type of default and the remedies. A default becomes an
9 Event of Default if not cured within the applicable cure period, or immediately, if
10 no cure period is specified. Potential Events of Default by Jicarilla Solar 2 LLC
11 under the PPA include: (1) the sale, dissolution, or abandonment of the facility;
12 (2) failure by Jicarilla Solar 2 LLC to maintain required security; (3) a Jicarilla
13 Solar 2 LLC bankruptcy; (4) failure by Jicarilla Solar 2 LLC to maintain the
14 interconnection to the PNM system; and (5) failure to make any payment when
15 due. Upon the occurrence of an Event of Default by Jicarilla Solar 2 LLC, PNM
16 may collect damages incurred prior to the termination date as a result of the Event
17 of Default, as well as terminate the PPA and receive a termination payment.
18 PNM customers participating in PNM Solar Direct will receive a credit for their
19 proportionate shares of the termination payment.

20
21 Article 12 also defines Events of Default related to non-performance of the
22 Jicarilla 2 Facility. Performance-related Events of Default include: (1) Jicarilla
23 Solar 2 LLC's failure to achieve the Commercial Operation Date on or prior to the

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1 Guaranteed Start Date;¹ (2) the failure of the Jicarilla 2 Facility to maintain, after
2 the third anniversary of the Commercial Operation Date, an availability
3 percentage of at least eighty percent (80%) over any twenty-four consecutive
4 months during the Term; and (3) the failure of the Jicarilla 2 Facility to maintain
5 an availability percentage of sixty-five percent (65%) over any Commercial
6 Operation Year.

7
8 Jicarilla Solar 2 LLC is liable for liquidated damages for non-performance.
9 Article 3.7 provides that, if the Commercial Operation Date has not occurred by
10 the Expected Commercial Operation Date, Jicarilla Solar 2 LLC will pay PNM
11 liquidated damages in an amount equal to two hundred dollars (\$200) per day for
12 each MW of capacity that is delayed. These delay liquidated damages are capped
13 at thirty-six thousand dollars (\$36,000) per MW of capacity that is delayed.
14 Jicarilla Solar 2 LLC also must pay liquidated damages if it has not caused all
15 delayed capacity to achieve Commercial Operation by the Guaranteed Start Date.
16 The amount of liquidated damages equals six hundred thousand dollars
17 (\$600,000) per MW of delayed capacity. Any termination or non-performance
18 payments will be credited to PNM Solar Direct subscribers.

19
20 **Q. PLEASE DESCRIBE TRANSMISSION COSTS PNM WILL INCUR OR**
21 **PAY FOR PURCHASED POWER, INCLUDING COSTS OF THIRD**

¹ Guaranteed Start Date is defined as one hundred eighty days after the Expected Commercial Operation Date. September 27, 2021 PPA, § 3.1.

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**PARTY WHEELING AND/OR CONSTRUCTION OF TRANSMISSION
FACILITIES (RULE 551.8(D)(3)).**

A. The Jicarilla 2 Facility will interconnect to the Jicarilla Apache Nation Power Authority (“JANPA”) 115 kV Substation on a 115kV generation tie line. Power will be delivered to PNM at PNM’s Jicarilla 345 kV Switching Station via a 345/115 kV transformer that connects PNM’s station to the JANPA substation. The project does not require any modifications to PNM interconnection facilities or transmission upgrades beyond the point of interconnection with JANPA other than metering additions to account for the Jicarilla 2 Facility. The developer is responsible for arranging the expansion of the Jicarilla Apache Nation-owned JANPA Substation to accommodate a 115 kV generation tie line of approximately 1.5 miles between the solar site and the JANPA 115 kV Substation.

**Q. ARE THERE ANY APPROVALS OR PERMITS REQUIRED TO
CONSTRUCT AND OPERATE THE JICARILLA 2 FACILITY (RULE
551.8(D)(5)(C)(I))?**

A. Yes. The required permits, which Jicarilla Solar 2 LLC is responsible for obtaining, are listed in Exhibit E to the Jicarilla 2 PPA, which is attached as PNM Exhibit TGF-2.

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1 **Q. PLEASE DESCRIBE THE JICARILLA 2 FACILITY (RULE**
2 **551.8(D)(5)(A) AND (C)(II), (III), AND (IV)).**

3 **A.** The Jicarilla 2 Facility is a new 50 MW solar photovoltaic facility that will be
4 located on the Jicarilla Apache Nation in Rio Arriba County, New Mexico. More
5 detailed site description is included in Exhibits A and C to the Jicarilla 2 PPA.
6 Construction is anticipated to begin upon Commission approval of the Jicarilla 2
7 PPA and the Expected Commercial Operation Date for the facility is March 31,
8 2021.

9
10 **Q. DOES THE JICARILLA 2 PPA PROVIDE FOR PNM ACQUIRING**
11 **OWNERSHIP OF THE JICARILLA 2 FACILITY DURING OR AFTER**
12 **THE TERM OF THE AGREEMENT (RULE 551.8(D)(5)(C)(V))?**

13 **A.** No. PNM has no purchase option under the Jicarilla 2 PPA.

14
15 **Q. IS ENTERING INTO THE JICARILLA 2 PPA CONSISTENT WITH THE**
16 **PROVISION OF SAFE AND RELIABLE ELECTRIC SERVICE AT THE**
17 **LOWEST REASONABLE COST (RULE 551.8(D)(6))?**

18 **A.** Yes. The 50 MW of solar generation that PNM is proposing to procure in this
19 application will be used to source PNM Solar Direct and will be paid for by the
20 customers participating in the program pursuant to the terms of the Solar Direct
21 Rider and the participating customers' Service Agreements with PNM. Since this
22 is a voluntary program, and the 50 MW capacity of the Jicarilla 2 Facility is fully
23 subscribed by program participants, the participating customers have determined

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1 the costs are acceptable. Because the subscribers to PNM Solar Direct are existing
2 PNM customers and not new or additional customer load, PNM does not need to
3 add other reliability generation resources in order to maintain adequate planning
4 and operating reserves on its system. Thus, addition of the Jicarilla 2 PPA meets
5 the participating customers' desire to procure additional renewable resources and
6 is also consistent with the provision of safe and reliable service to all PNM
7 customers.

8

9 **Q. IS THE RENEWABLE RESOURCE ADDITION PROPOSED IN THIS**
10 **APPLICATION CONSISTENT WITH PNM'S MOST RECENT**
11 **COMMISSION-ACCEPTED IRP (RULE 551.8(D)(8))?**

12 **A.** Yes. PNM's most recent Commission-accepted Integrated Resource Plan ("IRP")
13 was filed in 2017 and accepted by the Commission in its December 19, 2018
14 Final Order in Case No. 17-00174-UT. The addition of the proposed 50 MW
15 Jicarilla 2 PPA to serve existing customer load with renewable resources is
16 consistent with the 2017 IRP proposal. The Most Cost Effective Portfolio in the
17 2017 IRP included the addition of 50MW of solar in 2024, however, due to the
18 existing federal solar investment tax credits which will phase out in 2022, the
19 pricing of this solar proposal is more economical now rather than in 2024.

20

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**III. OTHER KEY PROVISIONS OF THE JICARILLA 2 PPA AND RFP
PROCESS**

**Q. PLEASE DESCRIBE THE OTHER PROVISIONS IN THE JICARILLA 2
PPA THAT PROVIDE OPERATIONAL OR OTHER BENEFITS (RULE
551.8(D)(11)).**

A. The Jicarilla 2 PPA includes 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 Jicarilla 2 PPA, Article 19 of the Jicarilla 2 PPA requires the sellers to post security, which increases the monetary incentive for the sellers to meet their capacity and schedule requirements.

For the Jicarilla 2 PPA, Jicarilla Solar 2 LLC is required to post and maintain security equal to \$60,000 per MW multiplied by the guaranteed capacity (50 MW) or \$3 million within the earlier of: 1) ninety days after the Execution Date; and 2) the commencement of construction of the project. Additionally, no later than the Commercial Operation Date, Jicarilla Solar 2 LLC will be required to post and maintain security equal to \$100,000 per MW multiplied by the guaranteed capacity or a total of \$5 million.

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1 **Q. COULD PNM-OWNED GENERATION RESOURCES HAVE BEEN**
2 **CONSTRUCTED AS AN ALTERNATIVE THAT WOULD HAVE**
3 **PROVIDED GREATER BENEFIT TO RATEPAYERS (RULE**
4 **551.8(D)(9))?**

5 **A.** Not in this instance. Selection of this resource was completed through a
6 competitive RFP process. PNM Solar Direct is offered because of the interest of
7 customers to participate in this program who are paying for the additional
8 resource. PNM Solar Direct customers have approved the price of this resource.

9
10 **Q. WHAT METHODOLOGY AND CRITERIA DID PNM USE TO SELECT**
11 **THE JICARILLA 2 PPA (RULE 551.8(D)(10))?**

12 **A.** On November 21, 2018, PNM announced the RFP and provided the instructions
13 to bidders and the bid documents on Power Advocate, a web-based platform.
14 PNM used Power Advocate to manage the RFP process and communications with
15 bidders and to help ensure unbiased information sharing. Bidders were required
16 to submit proof that they are properly licensed in New Mexico. The proposals
17 PNM received were evaluated based on complete costs, including transmission
18 interconnection and service. Of all the solar proposals received, the Jicarilla 2
19 PPA is the most competitive and scored overall higher on the evaluation matrix,
20 which included criteria such as creditworthiness, experience, safety record,
21 interconnection, environmental considerations and siting. PNM solicited
22 proposals for 50 MW of solar energy under either a PPA or a Build-Transfer
23 ("BT") option. The top four scoring proposals are provided in Table TGF-1

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below. The Jicarilla 2 PPA offered the lowest price partially due to the availability of the solar tax credits the project will receive.

Table TGF-1 Top Four Scoring Proposals	
Proposal	Total Evaluation Score, Contract Term and Cost per MWh
Bidder #1	15 year (\$21.73/MWh) 20 year (\$19.73/MWh) 25 year (\$19.53/MWh)
Bidder #2	15 year (\$29.75/MWh) 20 year (\$29.00/MWh) 25 year (\$28.25/MWh)
Bidder #3	15 year (\$27.19/MWh) 20 year (\$28.72/MWh)
Bidder #4	15 year (\$33.42/MWh) 20 year (\$29.88/MWh) 25 year (\$29.77/MWh)

Q. WHAT WAS THE RESPONSE FROM BIDDERS TO THE RFP?

A. Seventy-three proposals were received in response to the RFP, some of which were variations of proposals, from thirteen bidders. The proposals were submitted via Power Advocate.

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1 **Q. DESCRIBE THE RELEVANT FACTORS CONSIDERED IN THE BID**
2 **EVALUATION PROCESS.**

3 **A.** The proposals were evaluated to ensure they included the necessary information
4 for a complete bid, including complete costs, to allow PNM to evaluate them
5 fairly and equally. The factors for evaluation included:

- 6 • Transmission Cost and Schedule Evaluation
- 7 • Renewable Generation Tax Credit and Tariff Considerations
- 8 • Total Delivered Cost Evaluation

9
10 **Q. HOW WERE TRANSMISSION COSTS EVALUATED?**

11 **A.** An important element in the bid evaluation process was to consider the full costs
12 to the PNM Solar Direct participating customers for each new resource selection.
13 Transmission interconnection and transmission service costs can be a significant
14 contributor to this overall cost determination. Therefore, the review involved a
15 rigorous process for evaluating transmission and interconnection costs for each
16 bid.

17
18 Bidders were asked to include costs in each proposal for electrical transmission
19 interconnection, system network upgrades required to support the export of
20 generated electricity from each site, transmission system losses, and any required
21 wheeling fees. This information was reviewed for completeness. However, due
22 to the fact that some bidders had not yet entered into the generator interconnection
23 queue on PNM's system, they were unable to provide detailed estimates. Some

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1 bidders had a final interconnection agreement or had transmission system studies
2 with estimated costs for necessary upgrades. Similarly, some of those connecting
3 to PNM's transmission system via a third-party transmission provider had
4 accounted for the appropriate wheeling fees while others had not.

5
6 PNM solicited follow-up information and supporting data through the Power
7 Advocate question and answer process to gain additional information from the
8 bidders to validate supplied transmission cost information.

9
10 PNM's Transmission Planning Group provided a detailed review of any estimated
11 costs as well as recommendations for adjustments in these costs by either
12 referencing previous actual transmission studies or engineering estimates based
13 on their experience. These transmission costs were incorporated into the estimates
14 of the total delivered costs considered in the bid evaluation. Permitting timelines
15 associated with obtaining right-of-ways or easements were also considered.

16
17 **Q. HOW WERE TOTAL DELIVERED COSTS EVALUATED?**

18 **A.** For all proposals, the total delivered cost included:

- 19 • Project capital costs
- 20 • Project fixed and variable operations and maintenance costs
- 21 • Required transmission interconnection costs
- 22 • Required transmission system upgrade costs or wheeling fees to allow
- 23 for delivery to PNM's system
- 24 • Transmission system losses to PNM's system

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- PNM's costs for oversight and management of the contract
- Adjustments for expected project dispatch

Q. DO YOU HAVE ANY FURTHER COMMENTS ABOUT THE JICARILLA 2 PPA?

A. Yes. In general, the terms and conditions in the Jicarilla 2 PPA are typical in that they are market-based and similar terms and conditions are generally found in any long-term PPA entered into by PNM. Given the fact that PNM is entering into the Jicarilla 2 PPA pursuant to the terms of the Service Agreement with the customers and that no other PNM retail customers will be responsible for costs incurred by PNM under the Jicarilla 2 PPA, the terms of the Jicarilla 2 PPA should be deemed reasonable, and approval should be granted.

IV. CONCLUSION

Q. PLEASE SUMMARIZE THE REASONS WHY THE JICARILLA 2 PPA IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED.

A. As described above, the Jicarilla 2 PPA complies with the informational requirements of the Commission's PPA Rule. In addition, the Jicarilla 2 PPA is needed, reasonable, and in the public interest because it will allow the participants in PNM Solar Direct to procure additional renewable energy to meet their needs without adversely impacting PNM's other customers.

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1 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

2 **A. Yes.**

GCG#525519

PNM EXHIBIT TGF-1

Consisting of 1 page

THOMAS G. FALLGREN

EDUCATIONAL AND PROFESSIONAL SUMMARY

Address: Public Service Company of New Mexico
Aztec Facility (Z120)
2401 Aztec Road NE, Building A
Albuquerque, New Mexico 87107

Position: Vice President, PNM Generation, May 2017 to present

Previous Positions:

PNM

Managing Director Generation – Nov 2016 to May 2017

PNM

Director – Plant Manager San Juan Generating Station – July 2013 to November 2016

Xcel Energy, Southwestern Public Service (SPS)

Director – Plant Manager Toltec/Plant X Complex - April 2011 to July 2013

Xcel Energy, Northern States Power (NSP)

Director – Plant Manager Black Dog Generating Facility - May 2008 to April 2011

Xcel Energy, Northern States Power (NSP) – Sherburne County Generating Facility 1996-2008
Operations Manager

Engineering & Technical Services Manager

Scheduling Administrator/Outage Manager

Xcel Energy, Northern States Power (NSP) – Monticello Nuclear Generating Plant 1984- 1996

Held Senior Reactor Operator (SRO) license/certification 1989 - 1996

Supt Maintenance Engineering

Maintenance Engineer

Operations Instructor

System Operations Engineer

Professional Affiliation:

Registered Engineer, State of Minnesota since 1994

Education:

University of Minnesota, Bachelor of Mechanical Engineering – High Distinction

Testimony:

NMPRC Case No. 17-00174-UT

NMPRC Case No. 18-00261-UT

NMPRC Case No. 18-00269-UT

NMPRC Case No. 18-00009-UT

NMPRC Case No. 13-00390-UT

PNM's 2017 Integrated Resource Plan

PNM's EIM Application

PNM's Application Facebook PPA-2

PNM's Application Facebook PPA

PNM's BART 2018 Filing

PNM EXHIBIT TGF-2

Consisting of 110 pages

**EXECUTION VERSION
SOLAR DIRECT PPA**

POWER PURCHASE AGREEMENT— JICARILLA SOLAR 2 FACILITY

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

JICARILLA SOLAR 2 LLC

Dated as of May 30, 2019

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Exhibit L	Annual Degradation Guarantees
Exhibit M	Annual Generation Forecast

POWER PURCHASE AGREEMENT—JICARILLA SOLAR 2 FACILITY

This Power Purchase Agreement—Jicarilla Solar 2 Facility, as may be amended from time to time, is entered into this 30th Day of May, 2019 (“**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 87158, and Jicarilla Solar 2 LLC (“**Seller**”), whose principal place of business is 2215 South York Road, Suite 202, Oak Brook, IL 60523. 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, Buyer will seek approval from the New Mexico Public Regulation Commission to offer eligible customers the option to participate in PNM Solar DirectSM, a voluntary solar renewable energy program; 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 fifty (50) MW (“**Project**”), as further defined herein and in Exhibit A to supply energy for PNM Solar DirectSM; 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,

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 shall have the meanings set forth herein.

“**Abandonment**” means (a) a cessation of work and operations at the Project for more than sixty (60) Days by Seller or Seller’s contractors but only if such cessation is not caused by a Force Majeure; or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this PPA, or in accordance with any consent executed by Buyer and a Lender.

“**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. 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.

“Aggregate Annual Solar Capacity Guarantee Damages Cap” has the meaning set forth in Section 10.9(E).

“Ancillary Services” means operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, other products associated with electric generation and Energy that the Project is capable of providing, and all other beneficial outputs of the Project not required for the operation of the Project.

“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).

“Applicable Law” means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, 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 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(D).

“Balancing Area” or **“BA”** 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.

“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 accounted for under Replacement Energy Costs.

“Buyer Curtailment” has the meaning set forth in Section 4.1(B).

“Buyer Economic Curtailment” has the meaning set forth in Section 4.1(B).

“Buyer-Requested Performance Tests” has the meaning set forth in Section 10.10.

“Buyer Termination Payment” means the sum of (a) 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, plus (b) 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. To the extent the total value of the calculation in subpart (a) above is negative, the value used in such subpart (a) will be zero. The Buyer Termination Payment does not include consequential incidental, punitive, exemplary or indirect or business interruption damages.

“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.

“Code” means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

“Commercial Operation” means that (a) Solar Units with an aggregate capacity of at least ninety-five percent (95%) of the Guaranteed 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) Seller has obtained all required consents and Governmental Approvals, (c) 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, (d) Seller has satisfactorily completed other testing as reasonably directed by Buyer or otherwise in accordance with Interconnection Agreement requirements and industry standards, (e) Seller has obtained required insurance coverage, (f) Buyer has received an officer’s certificate from Seller that the Project has been completed in all material respects (except for Delayed Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended), and (g) Seller has delivered to Buyer the Delivery Term Security.

“Commercial Operation Date” means the date on which (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit K, 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 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).

“Confidential Information” has the meaning set forth in Section 22.14(C).

“Contract Value” means the present values of the Energy Output, for each Commercial Operation Year (or portion thereof) in the then remaining term, determined without reference to the early termination, of (a) the quantity of Energy and RECs expected to be produced during such Commercial Operation Year (or portion thereof) times (b) the 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.

“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 Capacity” has the meaning set forth in Section 3.7.

“Delivery Term” has the meaning set forth in Section 7.1.

“Disclosing Party” has the meaning set forth in Section 22.14(A).

“Dispute Notice” has the meaning set forth in Section 13.8(A).

“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” shall mean that the long-term credit rating of a Person’s long-term senior unsecured debt is not “Baa2” or higher by Moody’s or “BBB” or higher by S&P.

“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.

“Electric Metering Device(s)” means all metering and data processing equipment used to measure, record, or transmit data relating to the Energy Output generated by the Project. Electric Metering Devices include 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 Peak Reliability Organization and/or 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, 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 Output” means Metered Output, Environmental Attributes (including RECs) and Ancillary Services generated by the Project.

“Energy Output Payment Rate” means the price to be paid by Buyer to Seller for the Energy Output, as set forth in this PPA.

“Energy Shortfall” has the meaning set forth in Section 10.9(B).

“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 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 specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (iii) any Energy, reliability or other power attributes from the Project.

“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 federal, state or local laws or regulations, and as to present a material risk under federal, state or local laws and regulations that a Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this PPA.

“Event of Default” means an Event of Default of Seller as set forth in Section 12.1 or an Event of Default of Buyer 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.

“Force Majeure Event” has the meaning set forth in Section 14.1.

“GAAP” has the meaning set forth in Section 22.18.

“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 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 Energy Output contemplated by this PPA, either directly or indirectly.

“Guaranteed 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 any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) 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 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.

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

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

“**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, including Affiliates 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; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; (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, issued by an entity meeting the Issuer Minimum

Requirements.

“Licensed Professional Engineer” means an independent, professional engineer reasonably acceptable to Buyer, licensed in the State of New Mexico, and otherwise qualified to perform the work required hereunder.

“Local Provider” has the meaning set forth in Section 1.4.

“Losses” has the meaning set forth in Section 20.1(A).

“Metered Output” means the Energy made available from the Project at the Point of Delivery, as measured by the Electric Metering Devices.

“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 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.

“Moody’s” means Moody’s Investor Services, Inc. and any successor thereto.

“Mountain Prevailing Time” or **“MPT”** means the time in effect in the Mountain Time Zone of the United States of America, whether Mountain Standard Time or Mountain Daylight Saving Time.

“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).

“NMPTCs” means any state or local production tax credit or investment tax credit determined by reference to renewable electric energy produced from renewable energy resources in effect in the state of New Mexico.

“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, WECC, and all other applicable agencies, self-regulatory organizations and industry committees 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 Instruction” has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

“Operating Parameters” has the meaning set forth in Section 10.4(A).

“Operating Procedures” means those procedures, if any, developed pursuant to Section 10.5.

“Operating Records” means all agreements associated with the Project, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, including but not limited to supply contracts, contracts for the manufacture and installation of the generating equipment and generator step-up transformer, material engineering drawings and construction contracts, and environmental permits, plans, and studies, 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.

“Peak Reliability Organization” 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.

“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 Solar DirectSM” means the voluntary solar program available to eligible PNM governmental and large commercial customers that will be supplied energy from the Project and for which Buyer will seek NMPRC Approval in the same docket as this PPA.

“Point of Delivery” means the electric system point within WECC Path 48 at which

Seller makes available to Buyer and delivers to Buyer the 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” 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.

“Project” means Seller’s solar energy generation facility with a nameplate capacity of fifty (50) MW located in Rio Arriba County, New Mexico which will produce the 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 and/or store electricity and deliver such electricity to the Electric Interconnection Point: Seller’s equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, step-up transformers, output breakers, facilities necessary to connect to the Electric Interconnection Point, 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 Energy Output subject to this PPA.

“Project Manager” has the meaning set forth in Section 10.1(D).

“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 at all times 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 Sites;

(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 electric 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.

“**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, 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 Curtailment**” means any curtailment of the Project by the BAA or Transmission Provider due to any of the following reasons: (a) the Transmission Provider and/or BAA directs a general curtailment, reduction or redispatch of generation in the area for any reason other than any economic purpose or to accomplish least cost dispatch; (b) the BAA curtails or otherwise reduces the Metered Output in order to meet NERC/WECC standards criteria in regard to compliance obligations to the PNM Balancing Area and/or Transmission Provider’s Transmission System to operate within system limitations or other operating areas as directed by the Peak Reliability Organization; or (c) for safety or equipment failure situations. For the avoidance of doubt, a Reliability Curtailment includes curtailments associated with an oversupply of generation on Buyer or the Transmission Provider’s Transmission System during a period of time when generating facilities connected to the Transmission Provider’s Transmission System are interrupted or reduced in an equitable and non-discriminatory manner,

but shall not include any curtailment for any economic purpose or to accomplish least cost dispatch, which curtailment shall be deemed a Buyer Economic Curtailment. If any of the conditions set forth in this definition subparts (a) through (c) are applicable, Buyer shall be rebuttably presumed not to be curtailing for economic reasons. Buyer, upon reasonable notice, will provide reasonable documentation relating to any Reliability Curtailments to confirm compliance with this definition.

“Renewable Energy Certificate” or **“REC”** means a document evidencing that the amount of renewable energy shown on the document has been generated from the Project and certified as such by WREGIS. For purposes of this PPA and registration with WREGIS, RECs are accumulated on a MWh basis with one (1) REC for each MWh of renewable energy generated. RECs include all Environmental Attributes associated with the generated energy. “RECs” 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 Energy production from, any portion of the Project, including the Tax Benefits, (ii) depreciation and other tax benefits arising from ownership or operation of the Project unrelated to its status as a generator of renewable or environmentally clean energy, and (iii) any Energy, reliability or other power attributes from the Project.

“Replacement Energy Costs” means the actual costs incurred by Buyer following an Event of Default by Seller that are reasonable and necessary to replace Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein) which Seller, in accordance with this PPA, would have generated at the Project and delivered to Buyer, but failed to so 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’s system, as reasonably determined 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 for an Event of Default also include (i) the reasonable amounts paid or incurred by Buyer for transmission or distribution of replacement Energy Output and any associated transmission or distribution costs, (ii) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Energy Output, and (iii) 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(B).

“S&P” means Standard & Poor’s Corporation and any successor thereto.

“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.

“SEC” or United States Securities and Exchange Commission has the meaning set forth in Section 22.18.

“Security” means Development Security or Delivery Term Security, as applicable.

“Seller” has the meaning set forth in the Preamble.

“Seller Curtailment” has the meaning set forth in Section 4.2.

“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 Transmission Provider Curtailment, (c) a Reliability Curtailment, (d) a Buyer Curtailment, (e) a Force Majeure Event, or (f) any breach or failure by Buyer to perform any of its obligations under this PPA (other than due to a breach by Seller of its obligations under this PPA).

“Seller Forced Outage” means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Project to the Electric Interconnection Point in an amount of at least five (5) MWs not associated with Seller Excused Hours.

“Seller Guarantor” means an entity with a long-term senior unsecured debt credit rating of “Baa2” or higher by Moody’s and “BBB” or higher by S&P that has made a Seller Guaranty for the benefit of Buyer.

“Seller Guaranty” means a guaranty in substantially the form attached as Exhibit J.

“Seller Permitted Transfer” means any of the following: (a) a Change of Control of Seller’s Ultimate Parent or a Change of Control of Seller where Seller’s Ultimate Parent is the same entity after such Change of Control; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; or (c) a transfer of: (i) all or substantially all of the assets of Hecate Energy NAF LLC (“**Hecate**”) or Seller’s Ultimate Parent in a single transaction; (ii) all or substantially all of Hecate’s or Seller’s Ultimate Parent’s renewable energy generation portfolio in a single transaction; or (iii) all or substantially all of Hecate’s or Seller’s Ultimate Parent’s solar 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 maintains 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., Energy Output) 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, 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 does not include consequential incidental, punitive, exemplary or 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 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 all reasonable attorneys' fees and expenses 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. For the avoidance of doubt, this PPA is Site specific.

"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 each inverter.

"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 (including ITCs but excluding NMPTCs), and any other tax credits which are or will be generated by the Project and (b) any cash payments or outright grants of money relating in any way to such tax credits or the Project.

"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 construction of the Project by monetizing the Tax credits, 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 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 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; provided, however, in no event shall the Test Period be longer than ninety (90) Days.

“Test Rated Power” has the meaning set forth in Section 10.8(D)(5).

“TP Forced Outage” means an unplanned component failure or other condition that requires all or a substantial portion of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System to be removed from service immediately.

“TP Maintenance Outage” means the removal of all or a substantial portion of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System from service to perform work on specific components that can be deferred, but that nevertheless requires all or a substantial portion of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System to be removed from service before the next TP Planned Outage. TP Maintenance Outages may occur anytime during the Commercial Operation Year, have flexible start dates, and may or may not have predetermined durations.

“TP Planned Outage” means the removal of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System from service to perform repairs that are scheduled in advance and have a predetermined duration.

“TP Reliability Curtailment” means any curtailment by the Transmission Provider in accordance with WECC operating policies and criteria and the OATT of Energy Output deliveries for reliability reasons but does not include any Buyer Curtailment.

“Transmission Provider” means Buyer, Buyer’s designated agent, or a third party acting in its 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 Curtailment” means curtailments of Energy from the Project directed by the Transmission Provider resulting from (a) a TP Forced Outage that is not the result of a Force Majeure Event, (b) a TP Maintenance Outage, (c) a TP Planned Outage, (d) a TP Reliability Curtailment, or (e) an Emergency Condition.

“Transmission Provider’s Interconnection Facilities” means the facilities necessary to connect the Transmission Provider’s Transmission System to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Transmission Provider for the direct purpose of physically and electrically interconnecting the Project, 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. Arrangements for the installation and operation of the Transmission Provider’s Interconnection Facilities shall be governed by 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 Hecate Energy NAF LLC.

“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 by WREGIS 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.

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) Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, surcharges, and the like.

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.

(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.

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 contract with the local utility in whose retail service territory the Project is located (“Local Provider”) for the supply of House Energy.

(A) Seller’s arrangements for the supply of House Energy to the Project shall

be separate and free-standing arrangements. 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 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 and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such facility shall not be delivered by Seller to Buyer under this PPA. House Energy shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and House Energy or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy. 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 fifteenth (15th) Commercial Operation Year, 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 apply to the transaction contemplated by this PPA, each term as more fully set forth in this PPA:

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	Seller: Jicarilla Solar 2 LLC
Project: Jicarilla Solar 2	
Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer and delivers to Buyer the Energy Output being provided under this PPA.	

Contract Term: 15 Commercial Operation Years	Guaranteed Capacity (MW_{AC}): 50 MW _{AC}
Product Type: Bundled Energy, Ancillary Services and RECs	Energy Output Payment Rate: \$21.73/MWh
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Prevailing Time (“MPT”)
Guaranteed Start Date: One hundred eighty (180) Days after the Expected Commercial Operation Date	
Expected Commercial Operation Date: March 31, 2021, subject to extensions as set forth in Section 3.6	

3.2 Project. Exhibit A provides a detailed description of the Project, including identification of the major equipment and components that will make up the Project. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed material changes in the Project.

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 at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units 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.

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 according to Prudent Utility Practice(s), the Agreement and the Interconnection Agreement. The Project shall 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 communication circuits from the Project to Buyer’s System Control Center for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for AGC by Buyer;
- (D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;
- (E) deliver Energy to Buyer, at the frequency specified by Buyer;

(F) be capable of being remotely started and stopped by Buyer's System Control Center; and

(G) be capable of immediate disconnection from the Buyer's system in the event of an Emergency Condition.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth herein, the Commercial Operation Date shall occur no later than the Expected Commercial Operation Date.

3.6 Extension Due to Force Majeure. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by a number of Days, up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event that delays construction or commencement of operation of the Project. Seller will give written notice to Buyer describing any such Force Majeure Event within five (5) Business Days after the occurrence of the Force Majeure Event. The number of Days of such extension is calculated from the date on which the Force Majeure Event begins. If a Force Majeure Event 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.

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 will use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer in an amount equal to Two Hundred Dollars (\$200) per Day per each MW of Delayed Capacity for each Day after the Expected Commercial Operation Date 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 Capacity and the Installed Capacity. In no event shall the aggregate Delay Damages exceed Thirty-Six Thousand Dollars (\$36,000) per MW of Delayed Capacity.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed 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 Six Hundred Thousand Dollars (\$600,000) per MW of Delayed Capacity ("**Capacity Shortfall Damages**"), in which case the Guaranteed 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. No less than thirty (30) Days prior to the date upon which Seller expects to begin delivering Test Energy, Seller shall give written notice to Buyer of such expected deliveries. 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 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.

3.10 Notice of Commercial Operation. Not less than sixty (60) 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. 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.

ARTICLE 4

AGC; Buyer Curtailment; Seller Curtailment

4.1 AGC; Buyer Curtailment.

(A) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to curtail the Project by use of the AGC system to effect its curtailment rights pursuant to this Section 4.1(B) (“**Buyer 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. Buyer Curtailment shall be allowed for (i) any curtailment requested by Buyer with the intended purpose of achieving economic savings by not purchasing energy from the Project (“**Buyer Economic Curtailment**”) or (ii) any other curtailment as required for the protection of the Buyer’s systems that is effectuated in a non-discriminatory manner given the operational circumstances at the time. Such Buyer Curtailment rights do not provide the Buyer with any rights to direct the operation of the Project. For a Buyer Economic Curtailment only, Buyer shall: (i) pay Seller an amount equal to the sum of the Energy Output Payment Rate multiplied by the Deemed Energy associated with the number of Buyer Economic Curtailment MWh. For purposes of this Section 4.1(B), “**Deemed Energy**” shall mean the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Buyer Economic 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 Buyer Economic 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.

(C) Seller shall reduce Energy Output from the Project during and to the extent of any Reliability Curtailment, Transmission Provider Curtailment, Seller Curtailment or

Buyer Curtailment. Buyer shall pay for Deemed Energy during a Buyer Economic Curtailment as specified above, but Buyer shall not be required to pay Seller for any curtailed Energy during any Reliability Curtailment, Buyer Curtailment, Seller Curtailment or Transmission Provider Curtailment.

4.2 Seller Curtailment. A Seller Curtailment occurs any time the Project is unable to deliver otherwise available Energy to the Point of Delivery as a result of transmission limitations prior to the Point of Delivery, including as a result of Seller's scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements ("**Seller Curtailment**").

ARTICLE 5 Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to 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 Output 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) Buyer shall be responsible for costs required to deliver the Energy Output from and beyond the Point of Delivery.

(C) On a Day-ahead basis, and no later than 4:00 a.m. MPT, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer. 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 be responsible for 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.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and timely updates on the current availability of the Project to Buyer's SCC.

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 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.

(B) The following provisions of this Section shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise 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 owned, installed, and maintained 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 based initially on the amount specified by the manufacturer for expected losses, *provided* that the Parties may revise this loss adjustment based on actual experience. Seller shall provide or arrange with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Buyer the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted. Buyer shall also have the right to conduct its own tests of the Electric Metering Devices in Buyer's reasonable discretion. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including obtaining any consent or other agreement from the Transmission Provider necessary to allow Buyer such access. 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 Buyer.

(D) Either Buyer or Seller may elect to install and maintain, at its own expense, backup metering devices ("**Back-Up Metering**") in addition to the Electric Metering Devices, 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 Back-Up 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 Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Back-Up 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, Back-Up 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 Back-Up 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 Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up 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 Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If Back-Up Metering is installed on the low side of Seller's step-up transformer, the Back-Up Metering data shall be adjusted for losses in the same manner as for the Electric Metering Devices. In the event that Back-Up Metering is not installed, or Back-Up 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 Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) In the event that 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 recomputed 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) Subject to Section 17.3, receipt of NMPRC Approval;
- (B) Receipt of approval of the Boards of Directors of Buyer and its parent company, as required; and
- (C) Firm subscription by eligible PNM customers to the full fifty (50) MW_{AC} available under PNM Solar DirectSM by June 28, 2019, unless otherwise agreed to by both Parties.

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 Energy Output

7.1 Sale and Purchase of 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 Energy Output made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase Energy Output when and to the extent that (a) a Party’s performance is excused by a Force Majeure Event, (b) a Transmission Provider Curtailment is continuing, (c) a Reliability Curtailment is continuing, (d) a Seller Forced Outage is continuing, (e) a Seller Curtailment is continuing, (f) a Buyer Curtailment is continuing, or (g) Seller’s performance is excused during Seller Excused Hours.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Energy Output 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 Output from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy Output shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes and Changes in Law. The Parties acknowledge and agree that (a) additional 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 additional Environmental Attributes is included in the Energy Output Payment Rate as Energy Output and (c) such additional Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any additional Environmental Attributes Seller must incur any third-party costs not otherwise

provided for in this PPA, or if any change in law or regulation 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 PPA in order to deliver the additional 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 additional Environmental Attributes. For the avoidance of doubt, Buyer shall remain 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 additional Environmental Attributes.

7.4 Scheduling.

(A) Seller shall arrange all scheduling services necessary to ensure compliance with WECC operating policies and criteria, Transmission Provider OATT requirements, and any other applicable guidelines. 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 Metered Output in accordance with WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines in a manner maximizing Metered Output from the Project based on the then-most-current forecast of energy provided by Seller, except for Transmission Provider Curtailments, Reliability Curtailments, Seller Forced Outages, Scheduled Maintenance Outages, Force Majeure Events, Buyer Curtailments, and Seller Curtailments. 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 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 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.

(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 (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the interconnection and delivery requirements in this PPA, the Parties shall cooperate in good faith to facilitate the delivery of Energy Output from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this PPA to the extent possible.

(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 Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MPT 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. MPT on each Day, submit a good faith estimate of the hourly quantities of 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 Forced Outages.

(A) Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Buyer Curtailment, Transmission Provider Curtailment, Reliability Curtailments, Seller Excused Hours or a Seller Forced Outage. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice (“**Outage Notice**”) of the declaration of the existence of a Buyer Curtailment, Transmission Provider Curtailment, Reliability Curtailment, Seller Excused Hours or a Seller Forced Outage. Seller shall provide such notice to Buyer’s System Control Center. An Outage Notice provided by either Party 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. Buyer or Seller (as appropriate) shall keep the other Party 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.

(B) Within five (5) business Days after the end of the Month, Seller shall prepare, maintain and deliver to Buyer a schedule that identifies all Scheduled Maintenance Outages, deratings and Seller Forced Outages that occurred during the Month. The data reported 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.

7.6 Availability Guarantee. Seller guarantees that the Project shall be available to produce Energy Output and shall pay Availability Damages, if any, in accordance with Seller’s obligations under the provisions of Exhibit I.

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 Commercial Operation Date:

(A) Monthly Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to the product of (a) the aggregate amount of Energy Output (MWh) delivered for Buyer to the Point of Delivery from the Project plus the Deemed Energy resulting from any Buyer Economic Curtailment multiplied by (b) the Energy Output Payment Rate. As used herein, the “**Energy Output Payment Rate**” is the rate of \$21.73 per MWh for the Energy Output delivered for Buyer to the Point of Delivery from the Project. For the avoidance of doubt, the Energy Output Payment Rate also compensates Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Energy Output Payment Rate includes all Taxes. Nothing herein confers on Buyer the right to, and Buyer may not, direct Seller to reduce the Energy Output of the Project for the provision of Ancillary Services or other financial consideration.

(B) If NMPTCs become available in connection with the Energy Output, Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

(C) In the event that Seller, Affiliate of Seller or Tax Equity Investor becomes eligible to receive any NMPTCs with respect to the Project, the value of such NMPTCs will be shared between the Parties. No later than thirty (30) Days after receipt or utilization of any NMPTCs by Seller, Affiliate of Seller, or Tax Equity Investor, Seller will remit to Buyer a payment equal to fifty percent (50%) of the value of such NMPTCs.

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. MPT 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 H ("**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 banks in the State of New Mexico are permitted to close on any date on which any payment by Buyer would otherwise have been due, 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 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. Notwithstanding anything contained in this PPA, 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 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 thirty (30) Day highest grade commercial paper rate as published in The Wall Street Journal on the first business Day of each Month ("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 ten (10) 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. In the event that 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 no gross receipts Tax is applicable to the sale or delivery of 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 Type 2 Nontaxable Transaction Certificate.

(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. If Buyer is assessed any Taxes or associated fees as a result of the improvement of a 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. Seller's prices under Section 8 are inclusive of such Taxes, allowances and credits during the Term.

(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 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, the PPA and other applicable requirements and standards. Seller will be solely responsible for, and the Energy Output 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.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates. If Seller becomes aware of any critical milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan to eliminate any delay in the construction schedule. 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. 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.

(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; or (b) for modifications, alterations, expansions or other changes that would not be expected to materially alter the Guaranteed Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project.

(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.

(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 Tests.

(A) Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("**Commissioning Tests**") as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing. 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 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 all of 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 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 nor 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 or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Energy Output delivered by Seller will meet all requirements 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.

(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 and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers and all other industry standards. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment 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.

10.5 Operating Procedures. Not later than thirty (30) days before the Commercial Operation Date, an operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable written Operating Procedures for integration of the Project into Buyer's system. 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 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 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 of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, 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. Buyer will use commercially reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

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, no later than September 1 of each Commercial Operation Year, Seller shall provide Buyer with a non-binding notice of the annual Scheduled Maintenance Outages for the following Commercial Operation Year and 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 annual Scheduled Maintenance Outage for the Commercial Operation Year will be subject

to 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 1st, December, or January 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. Seller must give Buyer no less than ninety (90) days' advance 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.

(B) 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. As of the start of the Test Period, Seller shall not sell or divert Energy Output to a third Person.

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 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**").

(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 L 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 L 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 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 M 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.

(H) Proposed terms associated with the guarantee, the required irradiance conditions, degradation allowances, modeling software inputs, and the methodology to be utilized for validation of the Guaranteed Capacity 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 0.960 (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 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 \$21.73/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 0.960. The amount of Annual Performance Test Guarantee Damages is calculated to be [$\$21.73/\text{MWh}$] X [$130,000 \times (1 - 0.930 / 0.960)$] = \$88,278.13.

(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 Sixteen Thousand Dollars (\$16,000) 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 Forty-Eight Thousand Dollars (\$48,000) per MW of Guaranteed Solar Capacity ("**Aggregate Annual Solar Capacity Guarantee Damages Cap**") over the Term of the PPA.

(F) Notwithstanding anything to the contrary in this PPA, the Parties agree that Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for any 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. 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 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) Only one (1) Buyer-Requested Performance Test may be requested per Commercial Operation Year.

(C) Buyer-Requested Performance Test may not be requested within three months of a previous Performance Test.

(D) 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 thirty (30) days 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 the engineer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall include the capability for measuring, indicating, and recording ambient temperature, barometric pressure, solar radiation, and relative humidity. Seller shall submit to PNM 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 system shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to provide indication of all measured parameters to PNM and the data shall be available to PNM via a PI historian interface.

(B) Seller shall not select the type of Weather Station without the prior written consent of PNM, 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.

ARTICLE 11

RECs and Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Other than as specified in Sections 11.1(D) and 11.1(E) below, effective from the date on which the Project first delivers Energy for sale 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 RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer no later than five (5) Business Days after the RECs are created in WREGIS, subject to a day-for-day extension based on availability of the WREGIS website. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within ten (10) Days after notice from Buyer of such failure. The RECs and Environmental Attributes transferred under this PPA shall be bundled with the associated Energy, and Buyer shall pay Seller for the bundled RECs and Environmental Attributes and Energy as set forth in this PPA.

(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 retired during the Term of this PPA.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this PPA or any successor 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.

(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 tracking all Renewable Energy Certificates corresponding to all Metered Output, and that all associated WREGIS

Certificates are issued and tracked and transferred in a timely manner to Buyer. 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 retain the RECs and Environmental Attributes in Buyer's WREGIS account and retire the RECs and Environmental Attributes on behalf of PNM Solar Direct customers pursuant to the terms of the service contracts between Buyer and such customers. Notwithstanding the foregoing sentence, Buyer shall have the exclusive right, upon written request by a participating customer in PNM Solar Direct, to transfer a customer's allocated share of RECs and Environmental Attributes sold to Buyer to the customer's WREGIS account to be retired by the customer on its own account.

(F) Seller shall 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, as that term is defined by WREGIS.

(H) 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.

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 other than as set forth below:

- (1) Seller's dissolution or liquidation;
- (2) Seller's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with any Lender;
- (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 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, waste, tampering with Buyer-owned facilities or other material misrepresentation or misconduct in connection with this PPA or the operation of the Project;

(6) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Days of receipt by Seller of written notice of such failure from Buyer or the entity providing such Security;

(7) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within 10 Business Days of receipt of notice of such failure;

(8) 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;

(9) 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) shall constitute an Event of Default upon the failure of Seller to cure within ten (10) Days of written notice from Buyer to Seller; or

(10) Seller's failure to deliver RECs in accordance with the terms of this PPA, unless remedied within ten (10) Business Days of receipt of notice of such failure.

(B) 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, 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 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 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) The Project fails, after the Commercial Operation Date, to maintain an Actual Availability Percentage of at least eighty percent (80%) over any twenty-four (24) consecutive months during the Term; or

(7) The Project fails, after the Commercial Operation Date, to obtain an Actual Availability Percentage of at least sixty-five percent (65%) over any twelve (12) consecutive months during the Term.

(C) 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) 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;

(2) Any representation or warranty made by Seller 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 Buyer; or

(3) 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 of this PPA (or any of its rights hereunder) 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.

(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 ten (10) 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 thirty (30) 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 PPA or the operation of the Project.

(2) Buyer's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Seller.

(D) 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) Buyer's assignment of this PPA, except as permitted in accordance with Article 18; or

(3) 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 Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, and the duty to mitigate damages set forth in Section 12.9, 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 an Event of Default of Seller, 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; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include an amount of cover damages equal to Replacement Energy Costs minus the product of (x) the quantity of Energy Output so replaced and (y) the Energy Output Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Energy Output notwithstanding the availability or prices of electric energy from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs and any Environmental Attributes pursuant to this PPA, provided that Buyer has used commercially reasonable efforts to avoid, minimize or mitigate the same. Seller acknowledges that Buyer entered into this PPA for the procurement of Energy Output, which includes RECs and Environmental Attributes. If Buyer is the Defaulting Party, the Parties agree that damages recoverable by Seller hereunder on account of an Event of Default of Buyer shall include costs and losses incurred by Seller due to such Event of Default, including, to the extent applicable, an amount of cover damages equal to the quantity of Energy Output produced by Seller following such Event of Default, plus, to the extent that Seller is unable to produce Energy Output due to the Event of Default of Buyer, an additional quantity equal to the amount of Energy Output that would have been produced by Seller absent such Event of Default of Buyer, each multiplied by the Energy Output Payment Rate; provided that the foregoing amount shall be reduced by an amount equal to (A) the amount of any revenues that Seller, using commercially reasonable efforts, is able to obtain by selling Energy Output to a third party or into the market, less (B) Seller's costs and expenses incurred to effectuate any such sales.

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 fifteen (15) 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 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) In the event that 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) In the event that 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 to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller 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 enumerated in Section 12.1 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, to the representative of said other Party. If 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.

13.2 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, at the Project that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records; 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 Buyer 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) monthly construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(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 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 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 from any Governmental Authority which address 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, 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 shall not be construed as an endorsement by Buyer of the design of the Project, does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project, otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts or, 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 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 Seller has defaulted under this PPA, 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, Exhibit C,

and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues.

(A) **Negotiations.** The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in a quick and inexpensive 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) 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 legal and equitable remedies.

ARTICLE 14 Force Majeure

14.1 Definition.

(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**" shall mean an event or circumstance that arises, after the commencement of construction at the Site, 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 and 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 civil, tribal, or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, 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).

(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, for any reason (the risk of which is assumed by Seller); (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 Energy Output of the Project caused by or arising from the acts or omissions of such third parties, unless 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 Buyer's interconnection request; (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; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions, 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 Seller or Seller's 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. Notwithstanding any other provision in this PPA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of one hundred eighty (180) 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 that failure to provide notice within ten (10) Business Days only waives the Force Majeure Event as to periods prior to when 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 Delay Caused by Force Majeure Event. 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 Energy Output from the Project or to deliver Energy Output from the Project, 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 and warrants 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 corporate 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 the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the construction 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 Energy Output good and marketable title to the RECs and Environmental Attributes;

(K) Seller has not sold, delivered or transferred the RECs or Environmental Attributes to any other Person, in whole or in part;

(L) All right, title and interest in and to the RECs and 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; and

(M) Each REC and 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.

(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. Buyer expressly disclaims and waives any warranty not expressly included in this PPA.

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, members, managers and/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.

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 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. 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 and its 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.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer and its Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer (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. Each Party shall promptly notify the other Party of any material investigations, 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 Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law in connection with (i) the execution and performance of this PPA, including but not limited to receipt of 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; (ii) approval of PNM Solar Direct included in Buyer's request for approval of this PPA; and (iii) any associated new or amended PNM rate or rate rider, and any waivers, included in PNM'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 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, 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 this PPA shall automatically terminate ten (10) Days after the date of such action by the NMPRC 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.

(2) If any NMPRC 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 NMPRC Approval order regarding whether Buyer or Seller will elect to 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, including a potential extension to the Expected Commercial Operation Date. If the Parties 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 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 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, including a potential extension to the Expected Commercial Operation 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.

(A) Cooperation. In connection with any assignment of this PPA by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, provisions containing at least the following: (i) an option, but not an obligation, for the Lenders to cure any monetary Event of Default of Seller within thirty (30) Days of the expiration of the cure period provided therefor in Section 12.1, and cure any non-monetary Event of Default of Seller within sixty (60) Days of the expiration of the cure period provided therefor in Section 12.1, prior to Buyer terminating this PPA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this PPA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this PPA or provide any consent or enter into any agreement that has a material adverse effect on Buyer or any PNM Solar DirectSM participant, and (b) Seller will be responsible for Buyer's reasonable costs (including, but not limited to, attorneys' fees) associated with Buyer's review, negotiation, execution and delivery of any documents in connection with such assignment. Nothing in this Section 18.6 shall impair Buyer's right to receive all of the damages arising out of or relating to Seller's default, including damages accruing prior to termination as set forth in Section 12.3 of this PPA.

(B) Financing Liens. 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 does 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 and facsimile numbers 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.

ARTICLE 19

Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to Sixty Thousand Dollars (\$60,000) per MW multiplied by the Guaranteed 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 Thousand Dollars (\$100,000) 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. In the event that no amounts are due and owing by Seller to Buyer under this PPA and provided no claims are then outstanding, Seller’s Delivery Term Security shall be released to Seller upon the earlier of (i) termination of this PPA in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

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 Buyer: (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, 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, 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 and such failure shall be continuing after the lapse of any applicable grace period permitted 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. Buyer shall

not be required to post security.

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 until such time as the Security is exhausted.

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 (as defined in Section 20.1(A)) 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 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.

20.4 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. 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 Energy Output that are imposed on the making available of 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 Energy Output that are imposed at and from the taking of 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 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” 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).

22.4 Disclaimer of Certain Third Party Beneficiary Rights. 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. 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.

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 the employment of Persons to perform such services, 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 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 the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect to the sale of Energy Output from the Project. 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 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 the United States District Court for the District of New Mexico.

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, potential lenders, 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). Subject to Section 22.14(E), to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority, or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts means to ensure that such Confidential Information is not made public.

(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 PNM or on PNM’s behalf)), or which concerns this PPA, the Disclosing Party or the Disclosing Party’s stockholders, members, affiliates or subsidiaries, 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, stockholder, 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 Receiving Party’s 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;

(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; and

(4) information developed by the Parties during the negotiation of this PPA that relates solely to this PPA (as opposed to confidential business or operating information of either Party), which information 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.

(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.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure in the proceeding shall 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, however*, Seller acknowledges and agrees that Buyer may disclose this PPA and related documents, without seeking a protective order or similar process, in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction.

22.15 Marketing Rights; Press Releases and Media Contact; Access.

(A) Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this PPA and the RECs that are generated under this PPA and 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 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**"). 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. Upon sufficient advance written notice, 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. Notwithstanding the foregoing, either Party shall be permitted to disclose the following terms with respect to this PPA:

- (1) Party names;
- (2) Renewable resource type;
- (3) Term;
- (4) Project location;
- (5) Guaranteed Capacity;
- (6) Commercial Operation Date; and

(7) Point of Delivery.

(B) If Seller erects signage associated with the Project, Seller shall display, at PNM's direction, the names and logos or seals of PNM Solar DirectSM participants as off-takers of the Energy Output.

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. Notwithstanding any other provision of this PPA, the Parties acknowledge that this PPA is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this PPA, that this PPA may be terminated and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise of the remedies set forth herein.

22.18 Accounting Matters. The Parties agree 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 (i) will be considered a lease under Accounting Standards Codification 842 - Leases, or (ii) 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 Parties agree to the following provisions 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's 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). 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, 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 in confidence 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

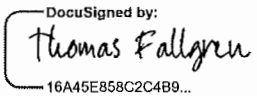
and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information, based on the advice of its counsel that it is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

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.

[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:  5/30/2019
16A45E858C2C4B9...

Name: Thomas Fallgren

Title: Vice President, PNM Generation

JICARILLA SOLAR 2 LLC

By:  5/29/2019
7167D1381206465...

Name: Chris Bullinger

Title: President, Hecate Energy NAF LLC
Sole Member of, Jicarilla Solar 2 LLC

EXHIBIT A
(to Power Purchase Agreement)

DESCRIPTION OF SELLER'S GENERATION FACILITIES
AND SITE MAP

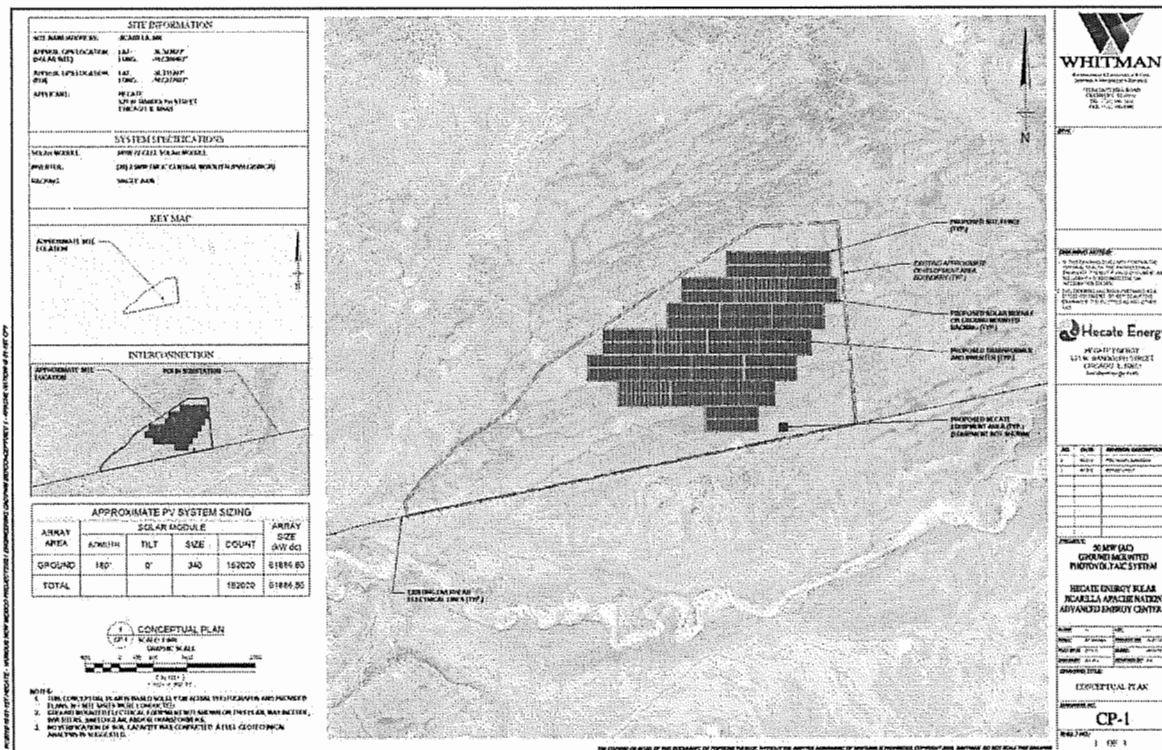
1. Name of Seller's Project: Jicarilla Solar 2 Facility

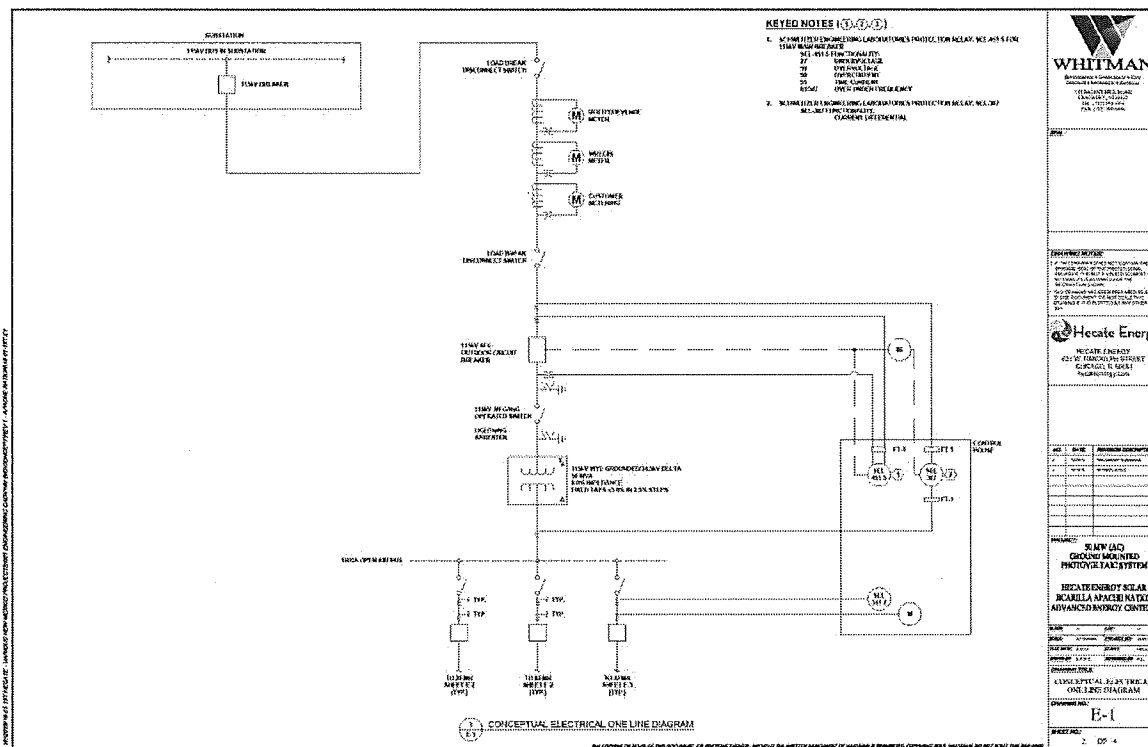
Location: 36.316748, -107.316393, where PNM 345 line intersects NM State Highway 537
2. Owner (if different from Seller): Jicarilla Solar 2 LLC
3. Operator: Seller or Affiliate thereof
4. Equipment/Fuel:
 - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Solar PV
 - b. Total number of units at the Project: 20
 - c. Total nameplate capacity (MWp): 61.8 MWdc
 - d. Total capacity at point of delivery: 50 MWac
 - e. Additional technology-specific information: NA
5. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.

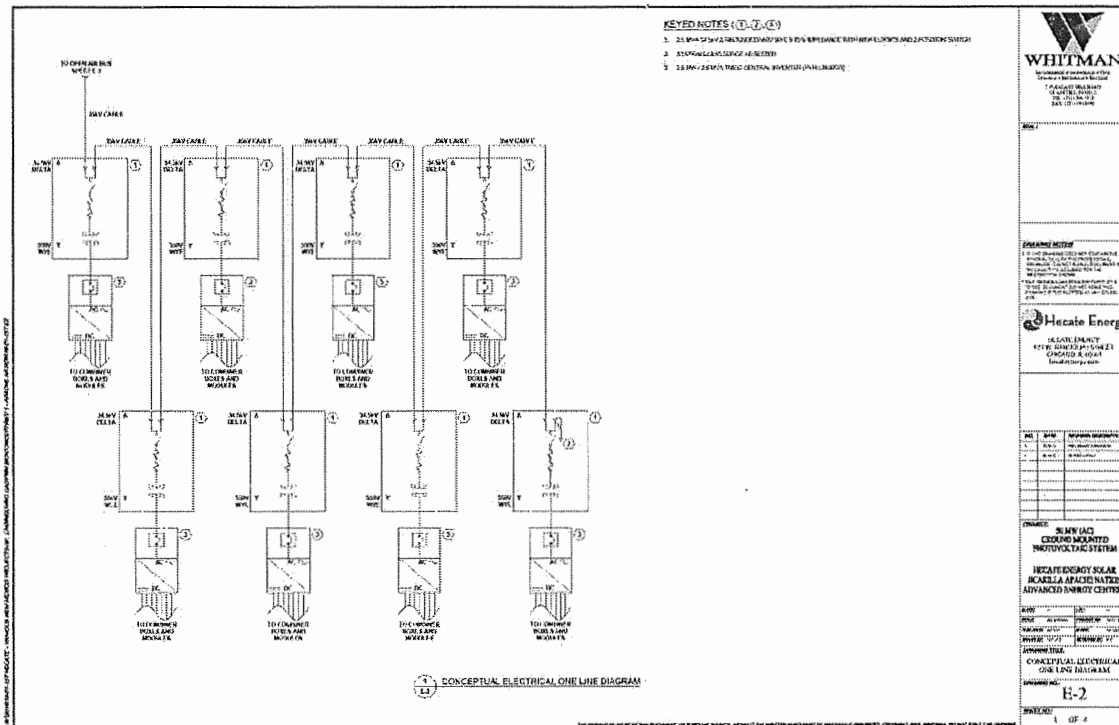
EXHIBIT B
(to Power Purchase Agreement)

ONE-LINE DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

See attached one-line diagram of the Project, which indicates the Interconnection Facilities, the network upgrades, the Electric Interconnection Point, the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point) and ownership and location of meters. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.







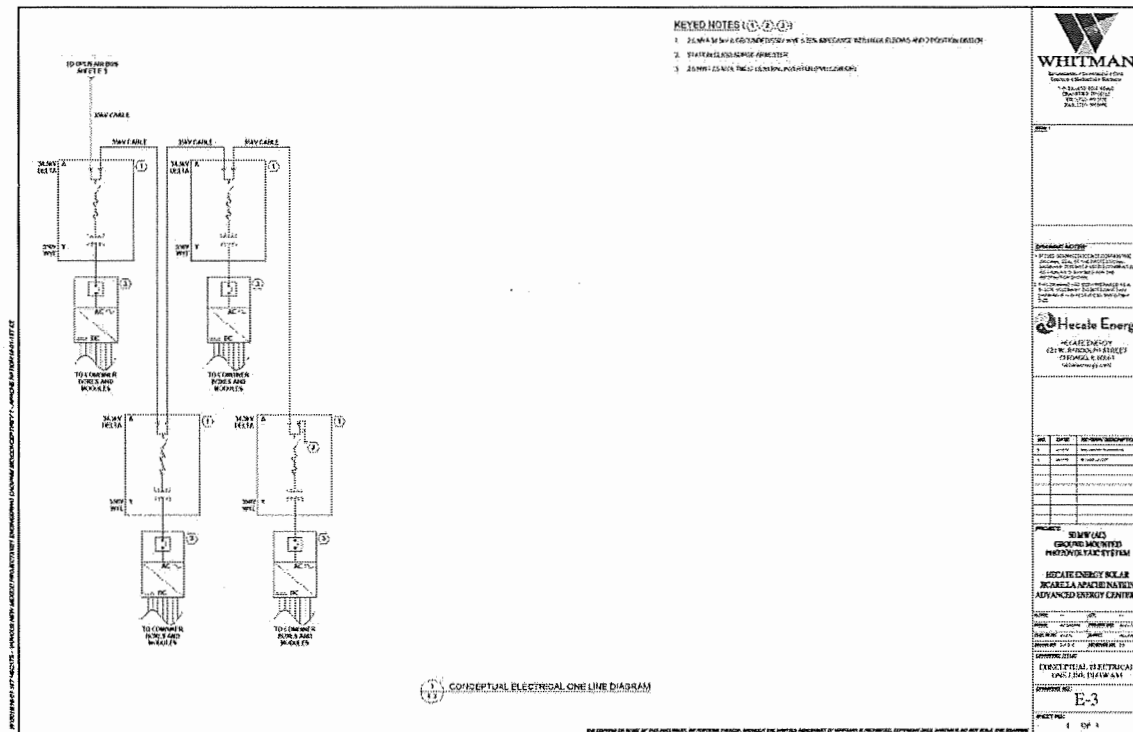


EXHIBIT C
(to Power Purchase Agreement)

DESCRIPTION OF SITE
JICARILLA SOLAR SITE I AND SOLAR SITE II
PROJECTS TRACT A
RIO ARRIBA COUNTY, NEW MEXICO

SURVEYOR'S DESCRIPTION of: A certain tract of land, hereby designated as Tract A, a Solar Generation site for Energy Southwest, Inc., situated within protracted sections 7 & 18, Township 24 North, Range 4 West, and sections 11, 12, 13, 14 & 15, Township 24 North, Range 5 West, New Mexico Principal Meridian, Lindrith, Rio Arriba County, State of New Mexico, and being more particularly described as follows:

Beginning at the Northeastern corner of said Tract A, from which point the found marked original stone monument marking the northeast corner of section 12, T24N, R5W, NMPM, bears N19°23'43"W a distance of 4,093.93 feet, and from which point the found marked pipe marking the southeast corner of section 12, T24N, R5W, NMPM, bears S41°06'44"W a distance of 2,164.53 feet, and from which point the set Base Station, having the True New Mexico State Plane Central, NAD83(2011), US Survey Feet coordinates of N 1938811.14, E 1329685.04, Latitude 36°19'25.5", Longitude -107°18'17.5", bears N70°57'17"W a distance of 1,552.67 feet,

Thence S06°46'29"E a distance of 1,821.59 feet to a point where the tract boundary enters protracted section 18, T24N, R4W, NMPM,

Thence continuing S06°46'29"E a distance of 1,104.01 feet to Corner 1 of Tract A, from which point the found marked pipe marking the southeast corner of section 12, T24N, R5W, NMPM, bears N54°13'19"W a distance of 2,179.72 feet,

Thence S68°25'34"W a distance of 1,925.06 feet to a point where the tract boundary enters section 13, T24N, R5W, NMPM,

Thence continuing S68°25'34"W a distance of 939.91 feet to a Corner 2 of Tract A,

Thence S87°44'15"W a distance of 4,314.88 feet to a point where the tract boundary enters section 14, T24N, R5W, NMPM,

Thence continuing S87°44'15"W a distance of 2,318.22 feet to Corner 3 of Tract A,

Thence N73°03'54"W a distance of 2,965.76 feet to a point where the tract boundary enters section 15, T24N, R5W, NMPM,

Thence continuing N73°03'54"W a distance of 1,366.12 feet to Corner 4 of Tract A,

Thence S13°11'52"W a distance of 414.53 feet to Corner 5 of Tract A,

Thence N63°59'48"W a distance of 1,381.82 feet to Corner 6 of Tract A, from which point the found marked original stone monument marking the northeast corner of section 12, T24N, R5W, NMPM, bears N63°08'28"E a distance of 14,648.38 feet,

Thence N79°11'02"E a distance of 2,709.94 feet to a point where the tract boundary enters section 14, T24N, R5W, NMPM,

Thence continuing N79°11'02"E a distance of 5,270.96 feet to a point where the tract boundary enters section 11, T24N, R5W, NMPM,

Thence continuing N79°11'02"E a distance of 26.12 feet to a point where the tract boundary enters section 12, T24N, R5W, NMPM,

Thence continuing N79°11'02"E a distance of 5,247.71 feet to a point where the tract boundary enters protracted section 7, T24N, R4W, NMPM,

Thence continuing N79°11'02"E a distance of 1,433.90 feet to the Northeastern Corner of Tract A, and the Point of Beginning.

The above described Tract of Land contains 799.75 Acres more or less in area.

EXHIBIT D
(to Power Purchase Agreement)
NOTICE ADDRESSES

**PUBLIC SERVICE COMPANY OF
NEW MEXICO**

JICARILLA SOLAR 2 LLC

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# 121000248
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

Contract Manager:

Public Service Company of New Mexico

All Notices/Invoices:

Delivery Address:

621 W. Randolph St
Chicago, IL 60661
Attn: Alex Pugh
Phone: 310.659.0936

With copy to:
2215 So. York Road Suite 202
Oak Brook, IL 60523
Attn: Mo Klefeker
Phone: 630.560.4223

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: Chris Bullinger
Address: 621 W. Randolph St
Chicago IL, 60661
Phone: 480.239.5617

Mo Klefeker
Address: 2215 So. York Road Suite 202
Oak Brook, IL 60523
Phone: 630.560.4223

Project Manager:

Jicarilla Solar 2 LLC
Attn: Alex Pugh
621 W. Randolph St
Chicago, IL 60661

Attention: Kevin Mataczynski
2401 Aztec Rd. NE
Albuquerque, NM 87107
Telephone: (505) 241-4147
Fax: (505) 241-2375

**With additional Notice of an Event of
Default, termination and other legal notices
to:**

Public Service Company of New Mexico
Attention: Tom Fallgren
2401 Aztec Rd. NE
Albuquerque, NM 87107
Telephone: (505) 241-4148
Fax: (505) 241-2375

With a copy to:

Public Service Company of New Mexico
Attention: Madonna N. Bixby, Senior
Corporate Counsel
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-4929
Fax: (505) 241-4318

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
--	---------------------

FEDERAL

Sec 10 Rivers/H Act Navigable Waters	N/A U S Army Corps of Engineers (USACE) No navigable waters obstructed on-site
Temporary construction discharge permit	USACE Section 404 CWA as required
EPA Spill Prevention	N/A Assume no hazardous chemicals on-site
Notice of Proposed construction	FAA Courtesy Notice
LGIA	FERC-to be completed by PNM/JANPA as required
Grants of Easement on Indian Lands	BIA
Environmental Assessment/ FONSI	BIA NEPA process for gen site/interconnection
National Historic Preservation Act	Jicarilla Apache - Lead Agency Waiver

STATE

NM Gross Receipts Tax Waiver	PNM Issues Non-Taxable Transaction Certificate For Wholesale Sale for Resale - NMTRD
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JICARILLA APACHE NATION

Development Plan	Jicarilla Tribal Land Office-JOGA
Limited Authorized Access Permit	Jicarilla Tribal Land Office-JOGA
Water well permit to drill- if required	Jicarilla Tribal Land Office-JOGA
Work Permit for all vendor employees	Jicarilla Department of Labor

Cultural Permit-construction activities	Tribal Historic Preservation Office
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Gross Receipts Tax Reporting for Construction Activity	Jicarilla Taxation & Revenue
---	------------------------------

Commercial Construction Permit per tribal Code Title 13.4 & 13.5	Jicarilla Nation as required
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National Discharge Elimination System (NPDES)

Construction General Permit CWA Section 402 (site > 1 acre)

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 Power Purchase Agreement)

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
- Curtailment Control (If applicable)
- Initial Performance Ratio Test

EXHIBIT G
(to Power Purchase Agreement)
INSURANCE COVERAGES

Seller shall obtain and maintain the following insurance coverages, at a minimum:

A. Workers' Compensation Insurance 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, owner's protective, 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, 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 of Twenty Million dollars (\$20,000,000) written on a per project 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. 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. For the avoidance of doubt, builders' risk insurance shall 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 with respect to facilities similar in construction, location and occupancy to the Project; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and engines, in an amount equal to their probable maximum loss.

EXHIBIT H
(to Power Purchase Agreement)

[RESERVED]

EXHIBIT I
(to Power Purchase Agreement)

AVAILABILITY GUARANTEE

Section 1. Definitions.

Capitalized terms used in this Exhibit I and not defined herein shall have the meaning assigned in Article 1 of the PPA.

“Actual Availability Percentage” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all 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 Period Hours in the relevant Commercial Operation Year for all Solar Units that were part of the Project on the Commercial Operation Date.

“Actual Energy Output” means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

“Aggregate Availability Damages Cap” has the meaning set forth in Section 2(3) of this Exhibit.

“Annual 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.

“Availability Damages” has the meaning set forth in Section 2(2) of this Exhibit.

“Available Hours” means for each Solar Unit, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Period Hours in such Commercial Operation Year, minus (b) the aggregate Unavailable Hours for such Solar Unit in such Commercial Operation Year, plus (c) the aggregate Excused Hours for such Solar Unit in such Commercial Operation Year.

“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.

“Excused Hours” means, in any Commercial Operation Year, (a) the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year; provided that for purposes of the Availability Guaranty only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for the Project per Commercial Operation Year shall be treated as Excused Hours, and (b) all hours during which a Seller Curtailment occurs in such Commercial Operation Year.

“Guaranteed Availability Percentage” has the meaning set forth in Section 2(1) of

this Exhibit.

“Period Hours” means the number of Daylight Intervals within any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

“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 (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition, in which case the hours when an Emergency Condition occurs shall be deemed a Transmission Provider Curtailment and included in Seller Excused Hours); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; or (d) otherwise not operational or capable of delivering Energy to the Point of Delivery.

Section 2. Availability Guarantee.

1. Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Availability Percentage equal to or greater than ninety-five percent (95%) in each Commercial Operation Year after the Commercial Operation Date (**“Guaranteed Availability Percentage”**).

2. Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Energy Output Payment Rate, multiplied by (y) the Guaranteed Availability Percentage minus the Actual Availability Percentage for such Commercial Operation Year (both expressed as a decimal), multiplied by (z) the Actual Energy Output for such Commercial Operation Year divided by the Actual Availability Percentage (expressed as a decimal), multiplied by the Guaranteed Availability Percentage (expressed as a decimal) (the **“Availability Damages”**), but in no event in excess of the Annual Availability Damages Cap and the Aggregate Availability Damages Cap. A sample calculation of the Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit I.

3. Damages Cap, Termination and Cure Rights. The total Availability Damages payable by Seller for failure to meet the Guaranteed Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Seventeen Thousand Dollars (\$17,000) per MW of Guaranteed Capacity (**“Annual Availability Damages Cap”**) and in the aggregate at a value equivalent to Fifty-One Thousand (\$51,000) per MW of Guaranteed Capacity (**“Aggregate Availability Damages Cap”**) over the Term of the PPA.

4. Sole Remedy. The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Guaranteed Availability Percentage) shall be the payment of damages up to the Annual Availability Damages Cap and Aggregate Availability Damages Cap, and the right to declare an Event of Default pursuant to Section 12.1(B)(6) and (7) of the PPA, if and to the extent applicable, and 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 giving rise to a termination payment obligation except pursuant to Section 12.1(B)(6) and (7) of the PPA, as and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the PPA and Seller's material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practice or Seller's failure to pay Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the PPA are an Event of Default of Seller for which Buyer may terminate the PPA and seek damages in accordance with Section 12.4 of the PPA.

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 Availability Percentage for the previous Commercial Operation Year and the Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Availability Damages Cap has been reached, if applicable. If 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 I shall be addressed as provided in Section 13.8 of the PPA.

ATTACHMENT 1 TO EXHIBIT I

EXAMPLE CALCULATION OF AVAILABILITY DAMAGES

I. Example of Actual 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
Period Hours ("PH")	4,000	50	200,000
Unavailable Hours ("UH")			5,000
Excused Hours ("EH")			1,000

Given these assumed facts, the Available Hours for the Solar Units during the Commercial Operation Year would be calculated as follows:

$$\text{Sum of Available Hours} = \text{PH} - \text{UH} + \text{EH}: 196,000 = 200,000 - 5,000 + 1,000$$

Actual Energy Availability Percentage

Given these assumed facts, the Actual Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

- (a) Sum of Available Hours: 196,000 hours
- (b) Sum of Period Hours: 200,000 hours
- (c) Actual Availability Percentage: $(\text{Sum of Available Hours} / \text{Sum of Period Hours}) \times 100 = (196,000 / 200,000) \times 100 = 98.0\%$

II. Example of Availability Damages

Example of Availability Damages based on the following assumed facts:

- (a) Seller's Guaranteed Availability in Commercial Operation Year 4 = 90%.
- (b) Seller's Actual Availability in Commercial Operation Year 4 = 85%.
- (c) Energy Output Payment Rate = \$21.73
- (d) Actual Energy Output = 130,000 MWh

Given these assumed facts, Seller calculates the Availability Damages due to Buyer as follows:

Energy Output Payment Rate x (Guaranteed Availability Percentage in Commercial Operation Year 4 — Actual Availability Percentage for Commercial Operation Year 4 (each expressed as a decimal)) x (Actual Energy Output for Commercial Operation Year 4 ÷ Actual Availability Percentage for Commercial Operation Year 4 x Guaranteed Availability Percentage for Commercial Operation Year 4 (the latter two expressed as a decimal)) = Availability Damage:

$$\$21.73 \times (.90 - .85) \times (130,000 \div .85 \times .90) = \$149,553.53$$

EXHIBIT J
(to Power Purchase 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 _____ 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 (i) the termination or expiration of the Agreement, and (ii) 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 (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):

<u>TO GUARANTOR:</u> *	<u>TO COUNTERPARTY:</u>
[●] <u>Attn:</u> Treasurer	<u>Attn:</u> [●]
[Tel: [●] -- for use in connection with	[Tel: [●] -- for use in connection with courier

<i>courier deliveries]</i>	<i>deliveries]</i>
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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 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.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[•]

By: _____

Name: _____

Title: _____

EXHIBIT K
(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 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 Energy Output and meet, at a minimum, the requirements indicated herein.

EXECUTED by SELLER this _____ day of _____, 20__.

<p>[●]</p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>[Licensed Professional Engineer]</p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>License Number and LPE Stamp: _____</p>
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EXHIBIT L
(to Power Purchase Agreement)

ANNUAL DEGRADATION GUARANTEES

Test at Beginning of Commercial Operation Year	Degradation-Adjusted Annual Guaranteed Capacity (% of Guaranteed Capacity)	Maximum % Degradation from Prior Year Actual Degradation
1 - Commissioning Test	100.00%	0.00%
2	97.00%	3.00%
3	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 3%) and 0.70% or (ii) 96.3%	0.70%
4	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 3.7%) and 0.70% or (ii) 95.6%	0.70%
5	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 4.4%) and 0.70% or (ii) 94.9%	0.70%
6	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 5.1%) and 0.70% or (ii) 94.2%	0.70%
7	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 5.8%) and 0.70% or (ii) 93.5%	0.70%
8	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 6.5%) and 0.70% or (ii) 92.8%	0.70%
9	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 7.2%) and 0.70% or (ii) 92.1%	0.70%
10	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 7.9%) and 0.70% or (ii) 91.4%	0.70%
11	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 8.6%) and 0.70% or (ii) 90.7%	0.70%

12	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 9.3%) and 0.70% or (ii) 90.0%	0.70%
13	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 10.0%) and 0.70% or (ii) 89.3%	0.70%
14	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 10.7%) and 0.70% or (ii) 88.6%	0.70%
15	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 11.4%) and 0.70% or (ii) 87.9%	0.70%

EXHIBIT M
(to Power Purchase Agreement)

ANNUAL GENERATION FORECAST

The following represents the annual 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	7,522	5
February	8,594	152
March	9,314	647
April	12,110	1,340
May	13,114	2,062
June	13,916	2,420
July	12,466	1,838
August	12,493	1,400
September	10,833	1,179
October	9,354	771
November	7,185	207
December	7,441	23
Total Annual	124,342	12,044
Total Combined Annual	136,385	
Annual Capacity Factor	31.14%	

Consistent with the Annual Generation Forecast, the following represents an hourly generation forecast that is representative of the average day for each month of the year. The forecast represents net, AC generation delivered to the Point of Delivery for the first year of service.

For the purposes of the hourly forecast, Hour 1 is from Midnight to 1:00 a.m.

Hour	Average Daily Load Profile (per Month) (MW)											
	Jan.	Feb.	March	April	May	June	July	August	Sept.	October	Nov.	Dec.
1	0	0	0	0	0	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0	0	0	0
5	0	0	0	0.0093	2.7397	6.3691	2.7933	0.0167	0	0	0	0
6	0	0	1.5611	12.2320	25.0987	32.4454	21.6036	13.8026	6.8354	1.6012	0	0
7	0.1579	5.4120	19.3258	32.4168	38.6687	41.8493	34.8904	31.3307	32.4784	23.2706	6.9106	0.7473
8	19.8466	29.5983	33.3672	41.2470	42.4644	44.5398	40.5351	41.4288	38.7440	35.4534	27.9135	22.2491
9	28.8939	34.4800	34.6310	39.4798	44.9435	46.4186	43.6754	45.9113	38.5318	35.6237	28.2234	31.6734
10	28.1082	34.1315	37.2053	44.0703	46.1799	48.2991	43.0733	45.8902	39.9344	35.4918	29.8792	31.7409
11	27.0651	31.6046	32.8360	43.7724	45.0261	47.7747	44.0945	45.5112	40.1687	33.7876	28.1173	27.6120
12	27.6427	33.7591	33.0660	43.1326	41.3083	48.4328	44.6827	45.3680	37.5381	35.3571	29.7524	27.0869
13	29.4335	35.0732	32.8742	41.5591	43.0014	44.1737	42.5225	43.7920	38.4808	35.6518	28.1732	31.3144
14	32.0355	35.6946	32.0305	42.0469	38.6312	43.7861	40.5630	41.6878	41.2135	34.9141	32.5835	31.9638
15	35.1056	34.7700	28.3665	38.6149	39.5650	40.9285	35.0930	35.8050	37.3069	34.1027	32.7792	33.5916
16	14.5298	35.7159	25.9467	38.5627	40.4217	39.5769	30.2717	32.6100	36.0536	20.0956	2.0768	2.7910
17	0	2.1062	10.0607	29.3142	36.9341	39.5129	26.8820	23.9316	13.0987	1.2753	0	0
18	0	0	0.0571	1.8619	4.5622	20.4195	10.6203	1.0672	0.0197	0	0	0
19	0	0	0	0	0	0	0.1006	0	0	0	0	0
20	0	0	0	0	0	0	0.1006	0	0	0	0	0
21	0	0	0	0	0	0	0	0	0	0	0	0
22	0	0	0	0	0	0	0	0	0	0	0	0
23	0	0	0	0	0	0	0	0	0	0	0	0
24	0	0	0	0	0	0	0	0	0	0	0	0
Monthly	7527.38	8745.67	9961.17	13449.59	15175.89	16335.80	14306.56	13892.75	12012.13	10125.37	7392.27	7463.88

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
PUBLIC SERVICE COMPANY OF NEW MEXICO)	
FOR APPROVAL OF PNM SOLAR DIRECT)	
VOLUNTARY RENEWABLE ENERGY PROGRAM,)	
POWER PURCHASE AGREEMENT, AND)	Case No. 19-00 _____-UT
ADVICE NOTICES NO. 560 AND 561,)	
)	
PUBLIC SERVICE COMPANY OF NEW MEXICO,)	
)	
Applicant.)	

AFFIDAVIT

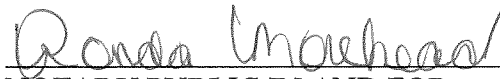
STATE OF NEW MEXICO)	
)	ss
COUNTY OF BERNALILLO)	

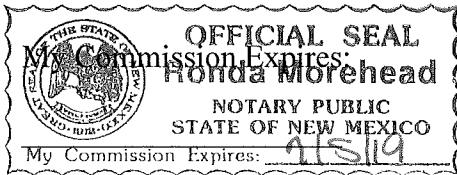
THOMAS G. FALLGREN, Vice President of Generation for Public Service Company of New Mexico, upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Thomas G. Fallgren** and it is true and correct based on my personal knowledge and belief.

SIGNED this 28th day of May, 2019.


THOMAS G. FALLGREN

SUBSCRIBED AND SWORN to before me this 28th day of May, 2019.


NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO



GCG # 525500