BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF PURCHASED POWER AGREEMENT, ENERGY STORAGE AGREEMENTS, AND CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SYSTEM RESOURCES IN 2028,	)	**Case No. 24-00271-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Applicant	)	

DIRECT TESTIMONY

OF

GARY B. BARNARD

November 22, 2024

NMPRC CASE NO. 24-___-UT
INDEX TO THE DIRECT TESTIMONY OF GARY B. BARNARD

WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO

DIRECT TESTIMONY
OF GARY B. BARNARD
NMPRC CASE NO. 24-_____-UT

I. INTRODUCTION AND PURPOSE

Q. Please state your name, position, and business address.

A. My name is Gary B. Barnard. I am Executive Director, Renewable Generation and Contracts for PNMR Services Company ("Services Company") and its affiliates, including Public Service Company of New Mexico ("PNM"). My business address is 2401 Aztec Road NE, Mail Stop MSZ120, Albuquerque, New Mexico 87107.

Q. Please summarize your educational background and professional qualifications.

A. A copy of my Education and Professional Summary is attached as PNM Exhibit GBB-1.

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

A. Yes, I have previously testified before the Commission in Case Nos. 17-00129-UT, 18-00009-UT, 18-00158-UT, and 24-00207-UT.

Q. What is the purpose of your testimony in this case?

A. I describe and support the Purchase Power Agreement ("PPA") and the Energy Storage Agreement ("ESA") contracts associated with a portfolio of resources that PNM is proposing for availability in 2028 to help meet current minimum planning requirements for system reliability to serve customers. Additionally, my testimony

addresses: 1) the description of PNM's proposed utility-owned Sunbelt 100 Megawatt ("MW") Solar + 30 MW 4-hour battery storage project ("Sunbelt Project" or "Project"); 2) the estimated capital costs and timing of the Project; and 3) the Project design benefits. My testimony also addresses how the Sunbelt Project meets several statutory criteria for approval of a Certificate of Public Convenience and Necessity ("CCN") for an energy storage system pursuant to NMSA 1978, Section 62-9-1(D) of the Public Utility Act ("PUA").

II. REQUESTED APPROVALS FOR RECOMMENDED 2028 RESOURCES

Q. Please identify the contracts that PNM is seeking for the proposed resources.

A. The selected portfolio includes the resources summarized below:

Valencia Power Plant PPA – The Valencia Power Plant PPA ("Valencia PPA") is between PNM, as buyer, and Valencia Power LLC, as seller, for approximately 167 MW of natural gas-fired generation. A copy of the Valencia PPA is attached as PNM Exhibit GBB-2.

Sun Lasso ESA **-** The Sun Lasso Storage ESA is between PNM, as buyer, and Sun Lasso LLC, as seller, for 150 MW_{AC} 4-hour battery storage. A copy of the Sun Lasso ESA is attached as PNM Exhibit GBB-3.

Corazon ESA – The Corazon ESA is between PNM, as buyer, and Corazon Energy Storage LLC, as seller, for 150 MW_{AC} 4-hour energy storage. A copy of the Corazon ESA is attached as PNM Exhibit GBB-4.

Gridworks Contract – The Sunbelt Project includes the Gridworks contract to build a 100 MW of solar generation facilities coupled with a 30 MW_{AC} 4-hour energy

storage system. Gridworks is responsible for the solar and battery construction. A copy of the Gridworks contract is attached as PNM Exhibit GBB-5.

Table GBB-1, below, summarizes the ownership, resource type, nameplate capacity, and location of each resource.

PNM Table GBB-1

Project Name	Ownership	Resource Type	Nameplate Capacity	County
Valencia Power Plant	PPA	Gas	167 MW	Valencia
Sun Lasso BESS	ESA	BESS	150 MW	Bernalillo
Corazon BESS	ESA	BESS	150 MW	Bernalillo
Sunbelt Project	Utility Owned	Solar + BESS	100 MW Solar + 30 MW BESS	San Juan
		Total (MW)	**596 MW**	

Q. Does PNM have any existing agreements with any of the selected bidders?

A. Yes. PNM has a PPA with Valencia Power, LLC, which expires in 2028. PNM currently has an existing natural gas agreement with Onward Energy for the Valencia Power LLC for natural gas resources and capacity. The new agreement replaces that agreement and extends it until December 31, 2039. PNM has contracted with Gridworks in the past.

Q. Are there time sensitivities associated with the proposed resources?

A. Yes. Each of these projects have approval date provisions written into their associated contracts to ensure to meet the installation dates. The Valencia PPA needs to be approved no later than 360 days after submittal, which assumes no more than 30 days after the November 4, 2024, signing date, or it can be cancelled by either party as outlined in Section 19.15 of PNM Exhibit GBB-2. The San Lasso

and Corazon ESA and the Sunbelt Project need to be approved no later than September 1, 2025, or they can be cancelled by the developers and contractor.

Q. Please describe the terms of the PPA and ESAs in response to the specific requirements of Rule 551.

A. The terms of the PPA and ESAs are generally the same, and my testimony addresses the PPA and ESAs jointly in support of the Rule 551 requirements, except where necessary to address them separately.

Q. Please describe the terms of the PPA and ESAs, including any options to extend. (17.9.551.8(D)(2)(A) NMAC)

A. There are no options to extend the Valencia PPAs or the San Lasso or Corazon ESAs beyond the initial terms of the contracts. The Valencia PPA has a term of 11.5 years, beginning May 31, 2028, and terminating on December 31, 2039. The Sun Lasso ESA has a 20-year term, with an expected start date of January 15, 2028, and a guaranteed start date of June 15, 2028. The Corazon ESA has a 20-year term, with an expected start date of December 31, 2027, and a guaranteed start date of June 1, 2028.

Q. Please describe the facilities that are the subject of the PPA and ESAs. (17.9.551.8(D)(5)(A) NMAC, 17.9.551.8(D)(5)(C)(II), (III), AND (IV) NMAC)

A. ***Valencia Power Plant PPA*** **-** The Valencia PPA is a replacement of the expiring Valencia Power PPA signed April 18, 2007. The Valencia Power Plant uses a 7FA GE natural gas turbine located in Belen, NM.

Sun Lasso ESA **-** The Sun Lasso project is a new 150 MW, 4-hour energy storage facility that will be located in Bernalillo County, New Mexico. A project description is included in Exhibit A to the ESA and additional site descriptions are provided in Exhibit C to the ESA (provided as PNM Exhibit GBB-3). Construction is anticipated to begin upon Commission approval of the ESA and the Expected Commercial Operation Date for the facility is January 15, 2028

Corazon ESA **-** The Corazon project is a new 150 MW, 4-hour energy storage facility that will be located in Bernalillo County, New Mexico. A project description is included in Exhibit A to the ESA and additional site descriptions are provided in Exhibit C to the ESA (provided as PNM Exhibit GBB-4). Construction is anticipated to begin upon Commission approval of the ESA and the Expected Commercial Operation Date for the facility is December 31, 2027.

Q. What is the nameplate capacity of the PPA and ESA projects and the amount of energy or capacity PNM will purchase under the PPA/ESA? (17.9.551.8(D)(2)(B) NMAC)

A. ***Valencia PPA*** **-** The nameplate capacity of the Valencia Power Plant is approximately 167 MW, and the project is expected to produce approximately 137,000 MWh of energy per year of operation.

Sun Lasso ESA **-** The nameplate capacity of the Sun Lasso Energy Storage facility is approximately 150 MW, 4-hour storage, 365 equivalent charge/discharge cycles per year.

Corazon ESA - The nameplate capacity of the Corazon facility is approximately 150 MW, 4-hour storage, 365 equivalent charge/discharge cycles per year. Please see Table GBB-1, above, for a tabular summary of each requested resource.

Q. Please describe the individual pricing PNM will pay under the PPA and ESAs, including when charges begin, any price reopeners, and any price escalation provisions. (17.9.551.8(D)(2)(C) NMAC)

A. ***Valencia PPA*** **–** There are several components to the pricing of the Valencia PPA. (See PNM Exhibit GBB-2, Section 7.1) There is a capacity charge of $9.20/kW/month, a variable O&M charge of $5.00/MWh (in year 1), and a start charge of $8,000 per start. All prices are indexed for inflation as explained in Section 7 of PNM Exhibit GBB-2.

Sun Lasso ESA **–** The price is $14.55 per MW hour. This price will remain fixed over the 20-year term of the ESA with no escalations and cannot be reopened once the ESA has been approved by the Commission and is in effect. Charges will begin on the Commercial Operation Date; the expected commercial operation date is January 15, 2028. PNM will only pay for the MWhs available during the year. Refer to Section 3.1 and Exhibit H of PNM Exhibit GBB-3.

Corazon ESA **–** The price is $15.40 per MW hour. This price will remain fixed over the 20-year term of the ESA with no escalations and cannot be reopened once

the ESA has been approved by the Commission and is in effect. Charges will begin on the Commercial Operation Date, the expected commercial operation date is December 31, 2027. PNM will only pay for the MWhs available during the year. Refer to Section 3.1 and Exhibit H of PNM Exhibit GBB-4.

Q. Do the PPAs or ESAs obligate PNM to pay any fixed or variable administrative costs, transactional, operation and maintenance costs, or any costs other than for delivered energy? (17.9.551.8(D)(2)(D) NMAC)

A. The ESAs do not require PNM to pay any administrative costs, transactional, or direct operation and maintenance costs. For the Valencia PPA, PNM will pay for starts, availability, heat rate, and a monthly variable payment based on energy generated. For the ESAs, PNM pays for megawatt-hours based on battery availability.

Q. Please describe the ESA provisions relating to non-performance. (17.9.551.8(D)(2)(E) NMAC)

A. The default provisions addressed in the ESAs, including the cure period for each type of default and the remedies, are the same between the ESA agreements. Typically, a default becomes an Event of Default if not cured within the applicable cure period, or immediately, if no cure period is specified. Potential Events of Default may include but are not limited to: (1) the sale, dissolution, or abandonment of the facility; (2) failure to maintain required security; (3) bankruptcy; (4) failure to maintain the interconnection to the PNM system; and (5) failure to make any

payment when due. More details are provided in Section 12.1 of PNM Exhibit GBB-3 and PNM Exhibit GBB-4. Upon the occurrence of an Event of Default, PNM may collect damages incurred prior to the termination date resulting from the Event of Default, as well as terminate the ESAs and receive a termination payment. Such damages would include the cost of replacement product for the Energy Storage System (ESS) and/or capacity the project failed to deliver under the terms of the agreement. Refer to Section 12.3B of PNM Exhibits GBB-3 and GBB-4. Section 12.1 of same exhibits also defines Events of Default related to non-performance of the facility. Performance-related Events of Default include: (1) failure to achieve the Commercial Operation Date on or prior to the Guaranteed Start Date and (2) the failure of the facility to maintain, after the Commercial Operation Date, an ESS Capacity during the twenty-year term. The project is liable for liquidated damages for non-performance. Section 3.7 of PNM Exhibit GBB-3 and PNM Exhibit GBB-4 provides that, if the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to terms of the agreement, the project will pay PNM liquidated damages on a dollar per day for each MW of capacity that is delayed. The project must pay liquidated damages if it has not cured all delayed capacity to achieve Commercial Operation by the Guaranteed Start Date, June 15, 2028.

Q. Please describe the PPA provisions relating to non-performance. (17.9.551.8(D)(2)(E) NMAC)

A. The default provisions are addressed in the Valencia PPA, PNM Exhibit GBB-2 Section 11. Typically, a default becomes an Event of Default if not cured within the applicable cure period, or immediately, if no cure period is specified. Potential Events of Default may include but are not limited to: (1) the sale, dissolution, or abandonment of the facility; (2) failure to maintain required security; (3) bankruptcy; (4) failure to maintain the interconnection to the PNM system; and (5) failure to make any payment when due. More details are provided in the PPA in Section 11.1 of PNM Exhibit GBB-2. The gas contract has provisions on starts and availability. In Section 7.1, the contract identifies a $12,000 penalty for every failed start and provides for at 97% availability guarantee.

Q. Are there any approvals or permits required to construct and operate the projects that are the subject of the PPA and ESAs? (17.9.551.8(D)(5)(C)(I) NMAC)

A. For the Valencia PPA, since the Valencia gas facility is already operational, no known approvals or permits are required for the construction or operation of this project. The battery storage projects covered by the ESAs are new and will require the needed approvals outlined in Exhibit E of PNM Exhibit GBB-3 and PNM Exhibit GBB-4.

Q. Do the PPA and ESAs provide for PNM acquiring ownership of their respective projects during or after the term of the agreement? (17.9.551.8(D)(5)(C)(V) NMAC)

A. No. PNM does not have any purchase or acquisition option under the Valencia PPA nor the San Lasso or Corazon ESAs.

Q. How will the energy from each PPA/ESA project be transmitted on PNM's system?

A. ***Valencia PPA*** **-** The Valencia Power Plant will continue to interconnect to PNM's Tome substation in Belen.

Sun Lasso ESA **-** The Sun Lasso storage project will interconnect to PNM's future Sunset Garden substation near 10100 Central Ave. SW, Albuquerque, NM 87121.

Corazon ESA **-** The Corazon project will interconnect to PNM's Pajarito Substation located in Bernalillo County.

Q. Please describe the provisions in the PPA and ESAs that provide operational or other benefits (17.9.551.8(D)(11) NMAC).

A. ***Valencia PPA*** **-** The Valencia PPA will provide approximately 167 MW of capacity and energy to the system. The plant can reach full load in 12 minutes and the minimum load is 55 MW providing improved grid reliability with quicker system response time. In addition to the system benefits the project provides a performance security of $12 Million as outlined in Section 10.1 PNM Exhibit GBB-2.

Sun Lasso ESA **-** The Sun Lasso ESA includes ancillary services including, frequency response, load following, contingency reserve, spinning reserve, and 150MW of four-hour battery to be used by system for energy storage and reliability. In addition to the system benefits provided under the ESA, Article 19 requires Sun

Lasso Storage to post security, which increases the monetary incentive to meet its capacity and schedule requirements. Sun Lasso Storage is required to post development security equal to $100,000 per MW multiplied by the guaranteed capacity (150 MW) or $15 million. Additionally, no later than the Commercial Operation Date, Sun Lasso Storage will be required to post and maintain security equal to $125,000 per MW multiplied by the guaranteed capacity or $18.75 million.

Corazon ESA **-** The Corazon ESA includes ancillary services including frequency response, load following, contingency reserve, spinning reserve, and will provide 150 MW of four-hour battery to be used by system for energy storage and reliability. In addition to the system benefits provided under the ESA, Article 19 requires Corazon Energy Storage to post security, which increases the monetary incentive to meet its capacity and schedule requirements. Corazon Energy Storage is required to post development security equal to $100,000 per MW multiplied by the guaranteed capacity (150 MW) or $15 million. Additionally, no later than the Commercial Operation Date, Corazon Energy Storage will be required to post and maintain security equal to $125,000 per MW multiplied by the guaranteed capacity or $18.75 million.

Q. Could PNM-owned resources have been constructed as alternatives that would have provided greater benefit to ratepayers? (17.9.551.8(D)(9) NMAC)

A. The resources selected were based on the resource evaluation discussed in more detail by PNM witness Duane. The proposed portfolio includes a utility owned project I discuss later in my testimony. There were no other alternative utility

owned resources submitted in the resource evaluation process that could have been constructed as an alternative to the Valencia PPA or the San Lasso and Corazon ESAs. Refer to the testimony PNM witness Nagel for bid evaluation process and consideration of alternative resources.

Q. Are the proposed contracts reasonable in their terms and conditions?

A. Yes.

Q. Has PNM complied with the provisions of the PPA Rule?

A. Yes, as detailed above.

III. REQUESTED APPROVAL FOR 2028 CCN RESOURCES

Q. What CCN approvals are PNM requesting in this case?

A. PNM is seeking a CCN for the Sunbelt Project.

Q. Please describe the Sunbelt Project.

A. The Sunbelt Project includes the acquisition, installation, and operation of 100 MW of photovoltaic ("PV") solar generation facility coupled with a 30 MW four-hour lithium iron phosphate ("LFP") battery energy storage system ("BESS"). It will be located within the Central Consolidated School District ("CCSD") in San Juan County, just south of the San Juan Generating Station. Gridworks will be PNM's contractor for this project. Construction is anticipated to begin upon Commission approval. Date for the completion of the project is December 31, 2027.

Q. Please provide the total estimated cost of construction for the Sunbelt Project.

A. The total estimated capital cost for the Sunbelt Project, including engineering, materials, construction, loads, and tax (including Gross Receipts Tax), is $220.4 million, including transmission and interconnection costs. The project costs do not include any additional percentages for contingencies and, as a result, PNM requests the Commission set the Certificated Estimated Cost[1] for the Sunbelt Project consistent with the project cost estimate. To the extent PNM experiences a cost overrun (*i.e.*, the actual costs of the project exceed the Certificated Estimated Cost by 10% or more), PNM would provide the information required by the Cost Overrun Rule (17.3.580 NMAC) to request recovery of these costs in its next rate case. PNM Table GBB-2 provides a summary itemization for the RFP-estimated cost of the Sunbelt Project. Refer to PNM witness Jenkins for the Transmission & Interconnection charge reflected below.

PNM Table GBB-2

Sunbelt Project Cost

Contract and Owner's Cost	$	219,883,236
Transmission & Interconnection	$	500,000
Total	**$**	**220,383,236**

[1] 17.3.580 NMAC applies whenever a utility has obtained or acquires a certificate of public convenience and necessity ("CCN") from the Commission to construct or operate an electric generating plant and has sought, is seeking, or anticipates seeking at any time to include the costs of construction as defined in in its New Mexico jurisdictional rates. 17.3.580.6(A)(1) NMAC provides that no cost overruns incurred in construction of new electric generating plant will be included in rates unless the Commission determines they were prudently incurred. 17.3.580.7(D) NMAC further provides that "Construction Cost Overrun" or "Cost Overrun" means that portion of the costs of construction which exceeds the certificated estimated cost by ten percent (10%) or more" in instances where no allowance for contingencies was included in the certificated estimated cost. Finally, 17.3.580.7(A) NMAC defines the "Certificated Estimated Cost" to mean the total cost of construction of electric generating plant for the utility, including Allowances for Funds Used During Construction ("AFUDC"), as estimated by the utility at the time of issuance by the Commission of the CCN for the plant and reflected in the order issuing the CCN.

Q. How did PNM develop the EPC costs for the Sunbelt Project?

A. The EPC costs for the Sunbelt Project are based on the EPC Project costs developed by Gridworks. The applicable New Mexico Gross Receipts Tax for the Project was included within the EPC contract price.

Q. What is PNM's estimate for the annual operating and maintenance expense for the Sunbelt Project?

A. Accounting for some degree of self-performance of operations and maintenance activities by PNM to provide cost savings to PNM's customers, levelized annual costs for long-term operations and maintenance services associated with the Project are estimated to be $850,000 which includes preventative maintenance, remote operation center support, insurance, and spare parts management. The estimated cost for the Long-Term Service Agreement (LTSA) for the battery is an additional $290,000.

Q. What is PNM's estimate for the annual capital additions for the Sunbelt Project?

A. PNM expects to incur future costs to maintain or augment the capacity of the system as needed to offset normal battery cell degradation over time. These periodic costs are estimated to be an annual levelized cost of $560,000 per year.

Q. Please describe the terms of the Gridworks Contract.

A. The Sunbelt Project is a PNM owned project with a defined payment and construction schedule. This contract with Gridworks is a turnkey EPC agreement. As explained above in my testimony, PNM is requesting the Commission approve a fixed Certificated Estimated Cost for the project that is not subject to adjustment for component pricing. Based on this arrangement, the cost risk to PNM customers is minimized because the CCN will be subject to the Cost Overrun Rule for any increase in costs.

Q. Please highlight the contractual protections in the Gridworks Contract.

A. The Contract, PNM Exhibit GBB-5, includes several provisions to help protect PNM customers. The Contract includes liquidated damages for delays in the in-service date of the Project. Delay damages are $200/MW/day for both the solar and storage (see PNM Exhibit GBB-5 Section 15.1). The Contract also includes performance guarantees with associated liquidated damages in the amount of $350,000 per MW for both contracted energy storage (Section 15.3) and solar capacity (Section 15.2) in MW, roundtrip energy storage efficiency, and storage response delay damages (Section 15.4). Also, the Contract includes a 12-month warranty period on materials and services with extended five-year warranties for inverters and a three-year warranty for the containerized BESS equipment. In addition, the Contract includes conditions of default along with associated termination rights, including a termination for convenience right on behalf of PNM.

Q. Please describe the Gridworks Contract provisions relating to non-performance.

A. The default provisions are addressed in the Contract. Typically, a default becomes an Event of Default if not cured within the applicable cure period, or immediately, if no cure period is specified. Potential Events of Default may include but are not limited to: (1) the sale, dissolution, or abandonment of the facility; (2) failure to maintain required security; (3) bankruptcy; (4) failure to maintain insurance coverages; and (5) failure to make any payment when due. More details are provided in the contract in PNM Exhibit GBB-5 Section 19.1.

Q. When will the Sunbelt Project be operational?

A. The Sunbelt Project is scheduled to become commercially operational and begin serving customers no later than December 31, 2027. PNM will need regulatory approval before September 1, 2025, or the Contract can be cancelled.

Q. What is the cost for the option to add an additional 20 MW of BESS to the Sunbelt Project as described in the testimony of PNM witness Monroy?

A. PNM included an option to increase the 30 MW battery in the Sunbelt Project by an additional 20 MW for a total of 50 MW. This would bring the project to 100 MW of solar and 50 MW of storage. The additional capital cost for this option is approximately $32M with the total capital cost approximately $252M. This option would only increase the battery component and would not require any additional

transmission interconnection or delivery upgrade costs for the project. No change to the schedule would be required.

Q. Do the requested contracts include requirements for reporting on apprenticeship requirements?

A. Yes. PNM has added requirements in each ESA contract to provide reporting and confirmation of meeting the apprenticeship requirements identified both at the federal and state level. PNM will report those requirements accordingly. Refer to Section 10.1B of PNM Exhibits GBB-3 and PNM Exhibit GBB-4 for each ESA. For the Gridworks Contract refer to Section 10.5 of PNM Exhibit GBB-5.

Q. Are there specific criteria applicable to CCN applications for energy storage facilities?

A. Yes, Section 62-9-1(D) of the Public Utility Act specifically governs the CCN criteria to be met for an energy storage system, which is defined as, "methods and technologies used to store electricity." The Sunbelt Project includes a battery energy storage system used to store electricity.

Q. What are the specific requirements pursuant to Section 62-9-1(D) for approval of an energy storage system included in the Sunbelt Project?

A. Section 62-9-1(D) states that the Commission shall approve an application for a CCN for an energy storage system that meets the following criteria:

(1) reduces costs to ratepayers by avoiding or deferring the need for investment in new generation and for upgrades to systems for the transmission and distribution of energy;

(2) reduces the use of fossil fuels for meeting demand during peak load periods and for providing ancillary services;

(3) assists with ensuring grid reliability, including transmission and distribution system stability, while integrating sources of renewable energy into the grid;

(4) supports diversification of energy resources and enhance grid security;

(5) reduces greenhouse gases and other air pollutants resulting from power generation;

(6) provides the public utility with the discretion, subject to applicable laws and rules, to operate, maintain and control energy storage systems so as to ensure reliable and efficient service to customers; and

(7) is the most cost effective among feasible alternatives.

Q. Has PNM provided evidence that the battery energy storage system included in the Sunbelt Project meets all seven of the criteria for approval pursuant to 62-9-1(D)?

A. Yes, PNM's Application meets the statutory criteria for approval of the BESS included in the Sunbelt Project. In the sections below, I explain how the seven criteria listed in Section 62-9-1(D) have been fully satisfied.

Q. Will the BESS included in the Sunbelt Project help to reduce costs to PNM's customers by avoiding or deferring the need for investment in new generation and for upgrades to systems for the transmission and distribution of energy as required under Section 62-9-1(D)(1) of the PUA?

A Yes. The BESS included in the Sunbelt Project will be located near an existing PNM substation and can be installed in a relatively short time frame. The existing substation site is established, the project site has been secured by PNM, there is a Large Generator Interconnection Agreement (LGIA) in place, limited gen-tie line and substation expansion work will be required, and the project will increase reliability and resiliency for customers. The Sunbelt BESS will provide generation grid benefits through shifting of energy from the high solar production hours to peak demand times when solar production is minimal.

Q. Will the BESS included in the Sunbelt Project reduce the use of fossil fuels for meeting demand during peak load periods as required under Section 62-9-1(D)(2) of the Public Utility Act?

A. Yes. The Sunbelt Project, including the BESS, will be charging energy delivered from the associated 100 MW solar facility and from PNM's renewable generation portfolio. This will allow PNM to reduce the use of fossil fuels for meeting peak system demands in post-solar hours. Energy produced by renewable resources that is stored in the BESS system during off-peak load periods will be able to be discharged flexibly and rapidly during the peak load periods and after peak solar generation hours. The ability to store energy reduces curtailments of solar

production, thus reducing and offsetting the historical dependency on, and dispatch of, fossil fueled generation.

Q. Will the BESS included in the Sunbelt Project assist in ensuring grid reliability, including transmission system stability, while integrating sources of renewable energy into the grid as required under Section 62-9-1(D)(3) of the PUA?

A. Yes. The BESS included in the Sunbelt Project offers extremely flexible and responsive capacity to the transmission system. With the ability to start and reach full discharge capacity (reflecting a system generator) or full charging capacity (reflecting a system load) within seconds it provides very favorable ancillary service capabilities to facilitate grid reliability and system stability. Ancillary service capabilities that can be provided include contingency reserves, regulation (up and down), voltage control, and frequency response, among others. All these services facilitate the increased integration of variable, renewable energy resources.

Q. Will the BESS included in the Sunbelt Project support diversification of energy resources and enhance grid security as required under Section 62-9-1(D)(4) of the PUA?

A. Yes. The BESS included in the Sunbelt Project will facilitate the increased integration of renewable and diverse energy sources within PNM's system. As noted in the prior question, the extremely responsive and flexible characteristics of

the proposed Sunbelt Project, combined with its ability to support ancillary services facilitate the increased integration of variable, renewable energy resources and increased system reliability.

Q Will the BESS included in the Sunbelt Project reduce greenhouse gases and other air pollutants during power generation as required by Section 62-9-1(D)(5) of the PUA?

A. Yes. Because the BESS included in the Sunbelt Project does not generate greenhouse gases or other air pollutants and because it will offset fossil fueled generation as described above by reducing curtailments of renewable resources, the BESS included in the Sunbelt Project will reduce greenhouse gas and other air pollutant production. As noted above, support of loads, which can remain near daily peak levels, after the solar generation hours, has been historically served by thermal resources.

PNM modeling indicates that the Sunbelt project will allow PNM to avoid 134,000 tons of carbon dioxide emissions between 2026 and 2039. The modeling is based on PNM's system with and without the Sunbelt project. Without the BESS included in the Sunbelt Project, PNM's portfolio results in a higher loss of load expectation than with the proposed resource portfolio in this Application as discussed in the testimony of PNM witnesses Monroy and Wintermantel.

Q. Will the BESS included in the Sunbelt Project provide PNM with the discretion, subject to applicable laws and rules, to operate, maintain and

control energy storage systems so as to ensure reliable and efficient service to customers as required by Section 62-9-1(D)(6) of the PUA?

A. Yes. Given PNM's procurement, ownership, and operations of the Sunbelt Project, including the BESS, PNM will have full control and management of the dispatch and maintenance of the project within the operating requirements of the BESS and battery cell manufacturer. PNM will be able to directly control the preventative, predictive, and unplanned maintenance activities associated with the BESS equipment to timely address any equipment issues and to ensure reliable and efficient service to customers.

Q. Is the BESS included in the Sunbelt Project the most cost effective among feasible alternatives as required under Section 62-9-1(D)(7)?

A. Yes. The Sunbelt Project is supported as part of the requested portfolio as discussed by PNM witnesses Monroy and Duane. While the Sunbelt Project is not part of the least-cost portfolio, the Sunbelt Project allows for resources to be located in the CCSD and is the lowest cost resource available in the CCSD. As discussed in more detail by PNM witness Monroy, there are benefits to having a mix of utility owned and contracted resources as part of PNM's portfolio. In addition, the Sunbelt Project, including the BESS, is the product of competitive bid processes and will utilize existing PNM infrastructure to minimize costs. The BESS included in the Sunbelt Project is modeled to receive investment tax credits, increasing the cost-effectiveness of the BESS included in the Sunbelt Project. PNM's direct management of the EPC agreement to control procurement risk markups and return

expectations also provide cost benefit. Together, these factors make the Sunbelt Project, including the BESS, the most cost-effective alternative for locating a resource in the CCSD.

Q. Does the Sunbelt Project provide overall net public benefits?

A. Yes. The Sunbelt Project serves the public interest in several respects. The system benefits include the following:

1) The Sunbelt Project mitigates operational issues caused by high solar generation by adding energy storage capacity to PNM's system. This energy storage capacity enables the ability to balance the Project's solar generation in times of high solar output and provide energy to the system during times of high demand but lower solar production, such as in the late afternoon. This Project's ability to provide firm energy during peak load helps PNM meet its resource adequacy requirements. By increasing system capacity, the Sunbelt Project helps to meet some forecasted system needs for additional bulk transmission-level capacity resources.

2) The Sunbelt Project mitigates operational issues caused by high solar generation by shifting energy availability from solar peak to net demand peak (arbitrage). PNM customers will benefit from wholesale pricing differences that exist between solar peak and net demand peak, because the BESS will charge at solar peak hours when the price is low and return the energy to the system at net demand peak hours when the price is high.

3) Charging from the Sunbelt Project's solar facilities is expected to occur at times when renewable production is at its greatest. With the additional load from charging the BESS, its renewable generation will be less at risk for curtailment.

4) As outlined above, installation of the Sunbelt Project is expected to help lower system-wide emissions.

5) As a dispatchable resource, the Sunbelt Project can also add the system benefit of operational flexibility to help optimize grid operation, and potentially provide ancillary services such as frequency regulation, contingency reserves, and for resource adequacy.

IV. CONCLUSION

Q. Please summarize your testimony.

A. The decision in support of this portfolio of contracts is a reasonable and practical response to current market conditions. These contracts leverage solar, battery and natural gas using proven technology, locations, and assets, and results in a cost-effective portfolio of assets for customers. The review process was supported by PNM's consultants, who are industry experts with experience in resource acquisition and engineering, design, and procurement processes, including energy storage systems. The approval of this portfolio of contracts provides energy, storage, and improves system performance and will help reduce greenhouse gases and help mitigate potential system curtailments. The Commission should approve PNM's request to construct, own, and operate the Sunbelt Project**.**

Q. Does this conclude your testimony?

A. Yes.

GCG#533200

Education and Professional Summary

PNM Exhibit GBB-1

Is contained in the following 3 pages.

GARY B. BARNARD
12501 Pino Ave. NE
Albuquerque, NM 87122
(505) 241-2854
email: gbarnar@pnm.com

ACCOMPLISHMENTS

- Developed, managed, sourced, and installed approximately 500MW of utility scale solar projects totaling approximately $950M on schedule and budget.
- Manage the operations and maintenance of 26 solar plants located across the State of NM.
- Responsible for all aspects of the construction of a 40MW gas plant for $60M near Belen NM.
- Direct the contract process for renewable contracts, construction contracts, and maintenance contracts for generation development including the bidding process.
- Developed and implemented Supply Chain planning, infrastructure, metrics, policies, and processes.
- Directed the development and implementation of enterprise wide benchmarks, metrics, and system infrastructure.
- Sourced, identified and captured $3 million in savings from fleet and corporate indirects off a spend amount of $13 million

WORK EXPERIENCE

EXECUTIVE DIRECTOR OF STRATEGIC ENERGY PLANNING, CONTRACTS AND DEVELOPMENT, PNMR, Albuquerque, NM 2010-Present
Develops the renewable strategies with a primary focus on solar. Responsible for Facebook renewable relationship including solar construction and wind PPAs. Manage PNM's affiliate renewable activities including solar and partnership development. Directs the generation development organization including utility scale solar generation, gas plant generation, wind and geothermal contracts, Palo Verde Nuclear plant relationships, and the maintenance and operations of the solar facilities. Manage all aspects of solar and gas generation and construction including site identification, technology assessment, environmental compliance, safety, public affairs, sourcing, interconnections, contract negotiations, project management, construction and maintenance. Currently constructing or have completed 137MW of solar at a total cost of approximately $340M. All projects were brought in on budget and schedule. Additionally, constructed a 40MW LM 6000 gas peaking unit. Responsible for wind and geo-thermal contracts in excess of $100M. Responsible for all aspects of renewable and gas generation.

DIRECTOR OF SUPPLY CHAIN CAPABILITIES DEVELOPMENT, PNMR, Albuquerque, NM 2006-2010.
Directed and developed the support services for the Supply Chain organization. These include: technology and systems infrastructure development, fleet and warehouse financial tracking, metrics, benchmarking, data cube, policies, procedures, processes, program management, financial analysis, budgeting, strategic planning and compliance. Supported the development of the centralized supply chain model. Developed job descriptions, interviewed candidates and set up structure for the new organization. Developed draft goals, targets, and operating plan for the organization. Responsible for developing, implementing and ensuring compliance of organizational policies, procedures, processes, systems, and reporting that span the entire organization. Directly managed key managers and responsible for performance management of the entire group. Provided reporting, metrics and benchmarks. Responsible for the strategic and operating plans of the organization. Managed the enterprise wide shared service analytics, benchmarks and metrics tracking.

DIRECTOR OF CORPORATE PROCUREMENT/CONTRACTS/A/P/PR, PNMR, Albuquerque, NM 2003-2006.
Implemented a review of corporate spend and began to update PNMR's procurement process. Sourced and negotiated new contracts with vendors and drove over $3m in savings in several areas of spend including fleet, cell phones, transportation, pagers, office supplies, and others. Created a company wide council of the procurement organizations to begin standardization of processes and savings opportunities. Implemented new processes and tools to standardize critical purchasing and payment functions. Managed the A/P and P/R functions and was able to reduce FTEs and improve process. Responsible for the management and performance of a group in excess of forty individual contributors.

DIRECTOR STRATEGIC PLANNING, IT, & ACCOUNTING SERVICES, BULK POWER SERVICES (subsidiary of Public Service Company of NM), Albuquerque, NM 1999-2003
Promoted to Controller of the new business unit of PNM in 1999, and became responsible for strategic planning and IT in 2000. Responsibilities included: directing the development of the business unit's strategic plan, which consisted of over $1 billion in incremental investments over a five year period, and tracking its implementation. Responsible for all the financial and managerial accounting for an organization that has over $1 billion in revenue, $1.4 billion in assets and over $100 million in net income in 2001. Directed the budget process for the unit, which includes an operating budget in excess of $200 million and a capital budget in excess of $150 million. Managed the development of a financial and accounting group consisting of more than thirty five professionals. Recommended business structures for new organization. Responsible for the business unit's IT strategy and final implementation of a $6 million software accounting system.

DIRECTOR OF MARKETING, **BUSINESS DEVELOPMENT, RATES, TRANSPORTATION, AND NATURAL GAS VEHICLE**S, PNM GAS SERVICES, Albuquerque, NM 1995-1999
Working existing marketing personnel, developed a dedicated commissioned sales force. Increased revenue by over $2.6 million with only five salespeople in one year. Created new product development group that developed and proposed several new products associated with the existing business. Developed and implemented tracking, forecasting, and rewards systems. Additional responsibilities of Rate department and Transportation department added to group after initial success. Designed and implemented new market based rates for natural gas vehicles and gas transportation, and this allowed for opportunities for revenue growth with existing assets. Responsible for a group of 50 contributors. Researched and negotiated corporate alliances for parent.

MANAGER OF BUSINESS PLANNING, PNM GAS SERVICES, Albuquerque, NM 1994-1995
Developed new plans that enhanced market penetration, focus and profitability. Product plans concentrated on immediate opportunities like water pumping, cogeneration, natural gas air conditioning, and others. Developed an updated natural gas vehicle business plan that focused on increasing returns and lowering capital expenditures by several million dollars.

SENIOR MANAGER OF BUSINESS PLANNING, BELLSOUTH ENTERPRISES, Atlanta, GA 1992-1994
Researched new business opportunities for BellSouth Enterprises including: Cable acquisitions, Electronic Commerce, Interactive Video, Video Dial Tone, Transactional Advertising, and Messaging Services. Developed marketing and product plans for new and existing products and services and tracked financial and market performance. Forecasted expenses and usage information for new entities. Prepared presentations on opportunities supporting the strategic direction of information services.

FINANCIAL MANAGER, BELLSOUTH INFORMATION SYSTEMS (BIS), Atlanta, GA 1991-1992.
Responsible for all pricing/planning/financial activities for BIS. Supervised the pricing, costing, budgeting, and billing for this $80 million subsidiary.

PRICING/MARKETING MANAGER, BELLSOUTH INFORMATION SYSTEMS, Atlanta GA. 1988-1991
Set prices for all the company's products. Forecasted revenue growth, product lines sales, and resource requirements. Projected financial performance of products and company Worked with Marketing Vice President in the design of the marketing organization. Developed marketing strategies for major lines of business.

EDUCATION

MBA, EMORY UNIVERSITY, Atlanta, GA 1988

- GPA 3.74 on 4.0 scale
- Merit Fellowship
- Beta Gamma Sigma (Business Honor Society)
- CPSM (Certified Professional in Supply Management) Certification Pending

BA, POLITICAL SCIENCE, UNIVERSITY OF NEW MEXICO, Albuquerque, NM 1986

- GPA 3.83 on 4.0 scale
- Phi Beta Kappa
- Summa Cum Laude
- Merit Fellowship

CERTIFICATIONS/SKILLS

Certified Professional in Supply Management (CPSM)
Member Institute for Supply Management (ISM)
Member Utility Purchasing Management Group (UPMG)
Project Management

Valencia Power Plant PPA

PNM Exhibit GBB-2

Is contained in the following 98 pages.

POWER PURCHASE AGREEMENT

between

VALENCIA POWER, LLC

and

PUBLIC SERVICE COMPANY OF NEW MEXICO

executed

November 4, 2024

TABLE OF CONTENTS

Page

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (the "***PPA***" or the "***Agreement***") is entered into on November 4, 2024 (the "***Effective Date***"), by and between Valencia Power, LLC, a New Mexico limited liability company ("***Seller***"), and Public Service Company of New Mexico, a New Mexico corporation ("***PNM***"). Seller and PNM are hereinafter referred to individually as a "***Party***" and collectively as the "***Parties***."

RECITALS

WHEREAS, Seller owns an electric generating facility consisting of one combustion turbine with an output, as of the Effective Date, of approximately 158 megawatts of net capacity, located at a site in Valencia County near Albuquerque, New Mexico;

WHEREAS, PNM and Seller entered into that certain Power Purchase Agreement (as amended or otherwise modified from time to time, the "***Original PPA***"), dated as of April 18, 2007, pursuant to which Seller agreed to sell and PNM agreed to purchase all of the electric capacity, energy output and other products and services from the facility through May 30, 2028, the end of the delivery term thereunder;

WHEREAS, pursuant to the Original PPA, Seller is permitted to modify the facility to increase the net capacity by up to 15 MW, for a net capacity of up to 173 megawatts; and

WHEREAS, Seller and PNM desire to enter into this Agreement in order for Seller to sell and PNM to purchase all of the electric capacity, energy output and other products and services from the facility (including from any increased net capacity thereof) following the end of the delivery term under the Original 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 I
DEFINITIONS

The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this PPA, whether in the singular or the plural or in the present or past tense. Other terms used in this PPA but not listed in this Article shall have meanings as defined elsewhere in this PPA or as commonly used in the English language and, where applicable, in Good Utility Practices.

"***AAA***" has the meaning set forth in Section 12.9(b).

"***Actual Start***" means each instance where the Facility delivers electrical energy at the Point of Delivery at the level of generation specified in a Start Request within forty-five (45) minutes after the time delivery of such electrical energy is to commence as specified in the Start Request.

"***Affiliate***" means, with respect to any Person, any other Person controlling, controlled by, or under common control with the first Person. The term "***control***" (including the terms "controlling," "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or the policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"***Agreement***" or "***PPA***" means this Power Purchase Agreement, including all exhibits and attachments hereto.

"***Automatic Generation Control***" or "***AGC***" means the automatic generation control to enable PNM to automatically and remotely regulate the generation of the Facility.

"***Availability Factor***" for a Month means (i) if such Month is an On-Peak Month, the percentage, rounded to the nearest one-tenth of one percent (0.1%), equal to the arithmetic average of the EAF for such On-Peak Month and each of the immediately preceding three (3) On-Peak Months (to the extent such On-Peak Months are within the Delivery Term); or (ii) if such Month is an Off-Peak Month, the percentage, rounded to the nearest one-tenth of one percent (0.1%), equal to the arithmetic average of the EAF for such Off-Peak Month and each of the immediately preceding seven (7) Off-Peak Months (to the extent such Off-Peak Months are within the Delivery Term).

"***Base Ambient Conditions***" means the following ambient conditions on which correction of performance testing of the Facility is based: (i) for any Test performed during the Summer Season, the Base Ambient Conditions are (A) ninety-five degrees (95°) Fahrenheit and (B) nineteen percent (19%) relative humidity; and (ii) for any Test performed during the Winter Season, the Base Ambient Conditions are (A) thirty degrees (30°) Fahrenheit and (B) twenty percent (20%) relative humidity.

"***Books and Records***" means all books of account and other financial records, files, documents, data, instruments, controls, books and records relating to Seller.

"***Business Day***" means any day other than a Saturday, Sunday or day that the banks located in the State of New Mexico are authorized or obligated to be closed by Law.

"***Capacity Charge***" means an initial amount equal to $9.47 per kW (per Month), which amount shall be increased by one percent (1%) on the first anniversary of the Delivery Term Start Date and on each anniversary of the Delivery Term Start Date thereafter.

"***Chemical Factor***" has the meaning set forth in Section 7.5(a).

"***Confidential Information***" has the meaning set forth in Section 19.14.

"***Consent***" means a consent to assignment, in substantially the form attached as Exhibit C or otherwise in form and substance reasonably acceptable to the Parties.

"***Contract Capacity***" has the meaning set forth in Section 6.1.

"***Control Area***" means PNM's system of electrical generation, distribution, and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

"***Daily Availability Plan***" has the meaning set forth in Section 6.2.

"***Damages***" means any and all damages, losses, claims, obligations, demands, assessments, penalties, liabilities, costs, damages and expenses (including reasonable attorneys' fees and expenses).

"***Damages Cap***" has the meaning set forth in Section 11.7(a).

"***Debt***" of any Person at any date means, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade account payable and other accrued expenses arising in the ordinary course of business, (iv) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable, (v) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument (except to the extent collateralized by cash or cash equivalents or otherwise constituting assets of or relating to the Facility), (vi) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, (vii) all Debt of others guaranteed directly or indirectly by such Person as to which such Person has an obligation substantially the economic equivalent of a guarantee, and (viii) obligations in respect of interest rate swap agreements, caps, collars, or other interest rate hedging mechanisms.

"***Defaulting Party***" means Seller in the event of a Seller Event of Default, and means PNM in the event of a PNM Event of Default.

"***Delivery Term***" means the period commencing at Hour Ending 01:00 MST on the Delivery Term Start Date and ending at Hour Ending 24:00 MST on the Delivery Term End Date, or if applicable, Hour Ending 24:00 MST on the effective date of termination if this Agreement is earlier terminated in accordance with the terms hereof.

"***Delivery Term End Date***" means December 31, 2039.

"***Delivery Term Start Date***" means May 31, 2028.

"***Delivery Term Start Date Capacity***" means the net electrical energy (expressed in kW) of the Facility at the Point of Delivery, as determined pursuant to the most recent Seasonal Capacity Test successfully performed prior to the Delivery Term Start Date, when corrected to Base Ambient Conditions and as determined in accordance with the applicable Test Protocols and Procedures and this Agreement.

"***Delivery Term Start Date Net Heat Rate***" means the Net Heat Rate of the Facility, as determined pursuant to the most recent Net Heat Rate Test successfully performed prior to the

Delivery Term Start Date, when corrected to Base Ambient Conditions and as determined in accordance with the applicable Test Protocols and Procedures and this Agreement.

"***Delivery Year***" means any consecutive 12-Month period commencing with the Delivery Term Start Date or its anniversary.

"***Dispute Notice***" has the meaning set forth in Section 12.9(a).

"***EAF***" for a Month means the EAF for such Month as determined in accordance with Exhibit F.

"***Early Termination Date***" has the meaning set forth in Section 11.5.

"***Effective Date***" has the meaning set forth in the first paragraph of this Agreement.

"***Emergency***" means any abnormal interconnection or system condition that requires automatic or immediate manual operation to prevent or limit loss of PNM's system or generation supply, that could adversely affect the reliability of the PNM system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

"***Escrow Agent***" has the meaning set forth in Section 10.1(f).

"***Event of Default***" means a Seller Event of Default with respect to Seller, and a PNM Event of Default with respect to PNM.

"***Facility***" means all of the following properties, rights and interests comprising or relating to the electric generating facility, consisting of the turbine and other facilities described in Exhibit B: Seller's equipment, buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to PNM's Interconnection Facilities at the "Point of Change of Ownership" (as defined in the Interconnection Agreement), protective and associated equipment, facilities necessary to connect to the Gas Interconnection Facilities at the Fuel Point of Delivery and associated piping and control systems, and above ground and underground fuel piping systems, as such equipment, facilities and property may be modified, altered, expanded, upgraded, repaired or replaced from time to time.

"***Facility Benefits***" means all beneficial aspects or consequences (but specifically excluding any environmental credits), produced by, available from or attributable to the Facility, including, without limitation, the Facility's capability to generate energy, the energy generated by the Facility, the ability to supply ancillary services, including reactive power (within the parameters specified in the Interconnection Agreement), load and frequency control, spinning reserves and non-spinning reserves, and all other characteristics, products or outputs produced by, available from or attributable to the Facility.

"***Facility Net Heat Rate***" at a particular point in time, means the then current Net Heat Rate of the Facility as determined in accordance with Section 7.3(b).

"***Facility Upgrades***" means modifications to the Facility after the Effective Date, but prior to the Delivery Term Start Date, the parameters for which are set forth on Exhibit B.

"***Failed Start***" means each instance where the Facility fails to deliver electrical energy at the Point of Delivery at the level of generation specified in a Start Request within forty-five (45) minutes after the time delivery of such electrical energy is to commence as specified in the Start Request.

"***Fast Start***" means the capability of the Facility to deliver electrical energy at the Point of Delivery at the level of generation specified in a Start Request in an accelerated timeline (as such timeline is determined pursuant to the Facility Upgrades) after the time delivery of such electrical energy is to commence as specified in the Start Request.

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

"***Financing Documents***" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap agreements and other documents relating to the development, bridge, construction and/or the permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller.

"***FlameSheet***" means the "FlameSheet" combustion system offered by PSM.

"***FlexRamp***" means the "FlexRamp" package offered by PSM.

"***FlexStart***" means the "FlexStart" package offered by PSM.

"***Force Majeure***" has the meaning set forth in Section 13.1.

"***Forced Outage***" means any condition at the Facility that requires immediate removal of the Facility, or some part thereof, from service, another outage state, or a reserve shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to Facility conditions and/or alarms.

"***Fuel Point of Delivery***" means the point at which the Gas is delivered by PNM to Seller under this PPA at the Site boundary, as more fully described in the Gas Interconnection Agreement.

"***Full Speed No Load (FSNL)***" means the operational condition of the Facility when it is running at its maximum designed speed but is not delivering any electrical power to the grid.

"***GAAP***" means generally accepted accounting principles in the United States of America, applied on a consistent basis.

"***GADS Manual***" means the NERC Generation Availability Data System Manual as the same may be amended from time to time.

"***Gas***" means any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

"***Gas Interconnection Agreement***" means that certain Interconnect and Operating Agreement, dated as of April 29, 2008, by and between Transwestern and Seller (as may be amended or otherwise modified from time to time).

"***Gas Interconnection Facilities***" means the pipeline and related facilities required to receive and meter the Gas to be delivered by PNM under this PPA from Transwestern's pipeline and to transport such Gas from such point(s) of receipt to the Fuel Point of Delivery.

"***Good Utility Practices***" means the practices, methods, and acts generally engaged in or approved by a significant portion of, with respect to Seller, the electric power generation industry and, with respect to PNM, the electric utility industry (including control area operators) (including, in each case where applicable, WECC or NERC guidelines) in the United States or any such practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Law, regulation, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition, and taking into consideration the requirements of this PPA. Good Utility Practices are not intended to be limited to the optimum practices, methods or acts, to the exclusion of all others, but rather to include a spectrum of possible practices, methods or acts generally acceptable in the region during the relevant period in light of the circumstances.

"***Governmental Authority***" means any and all federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, or taxing authorities of the United States of America or any department, municipality or other political subdivision thereof, including, without limitation, any regional reliability organization, independent system operator, regional transmission authority, or other similar Person.

"***Greenhouse Gas***" means emissions into the atmosphere of carbon dioxide (CO_2), nitrous oxide (N_2O) and methane (CH_4) and related gases which are produced as the result of combustion of fossil fuels. Greenhouse gases may be defined, or expressed, in terms of a ton of CO_2-equivalent, in order to allow comparison between the different greenhouse gases.

"***GTOP***" means a "Gas Turbine Optimization Package" turbine upgrade offered by PSM.

"***Guaranteed Net Heat Rate***" has the meaning set forth in Section 7.3(a).

"***Hour***" means a sixty (60) minute period during a day, commencing at HE:00.

"***Indemnified Party***" has the meaning set forth in Section 16.1.

"***Indemnifying Party***" has the meaning set forth in Section 16.1.

"***Insolvency Proceeding***" means, as to a Person, (i) any case, action or proceeding relating to bankruptcy, reorganization, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other similar arrangement in respect of such Person's creditors generally, or any substantial portion of such Person's creditors, undertaken under any Law applicable to such Person, including, without limitation, the federal laws of the United States of America or any state thereof, including the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, *et seq.).*

"***Interconnection Agreement***" means that certain First Revised Amended and Restated Standard Large Generator Interconnection Agreement, dated March 6, 2014, by and between Valencia Energy, LLC and PNM.

"***Interconnection Facilities***" means PNM's Interconnection Facilities and Seller's Interconnection Facilities.

"***Interest Rate***" means, for any day, the per annum rate of interest quoted by Citibank, N.A., or its successors, as its prime rate, *plus* three percent (3%).

"***kW***" means kilowatt.

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

"***Law***" means any and all law, legislation, constitution, statute, charter, ordinance, rule, resolution, order, treaty, regulation, court decision, practice, procedure, guideline or requirement, or any interpretation thereof, enacted, issued, promulgated, adopted or established by any Governmental Authority, and shall include, without limitation, the procedures, rules and regulations of WECC, NERC and PRC.

"***Letter Agreement***" means the Letter Agreement, dated February 1, 2007, between Seller, as assignee of Black Hills Generation, and PNM, as amended and restated.

"***Lien***" means any mortgage, deed of trust, lien, pledge, charge, security interest, easement or encumbrance of any kind, whether or not filed, recorded or otherwise perfected or effective under applicable Law.

"***Major Maintenance Factor***" has the meaning set forth in Section 7.5(a).

"***Major Maintenance Labor Factor***" has the meaning set forth in Section 7.5(a).

"***Materials Factor***" has the meaning set forth in Section 7.5(a).

"***Minimum Load***" means the lowest level in megawatts at which the Facility can maintain stable continuous operations.

"***Month***" means a calendar month beginning at Hour Ending 01:00 MST on the first day of such month and ending at Hour Ending 24:00 MST on the last day of such month.

"***Monthly Capacity Payment***" has the meaning set forth in Section 7.1.

"***Monthly Fuel Cost***" for a Month, means all costs and expenses incurred by PNM to purchase and deliver Gas to the Fuel Point of Delivery during such Month, including, without limitation, the purchase price of such Gas, transportation charges (including fuel), taxes, pipeline imbalances, park and loan, storage, and Transporter fees, penalties (including daily and hourly) and other charges.

"***MST***" means Mountain Standard Time.

"***MWh***" means megawatt hour.

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

"***Net Capability***" at a particular point in time means the lesser of (i) the then current Net Capability of the Facility as determined in accordance with Section 3.2 or (ii) 173,000 kW.

"***Net Heat Rate***" means the fuel consumption measured over a specified period of time for the Facility *divided by* the net electrical energy of the Facility at the Point of Delivery (less any generation utilized by the Facility for auxiliary equipment) for the same period of time, which Net Heat Rate is expressed in Btu (LHV) per kWh.

"***Net Heat Rate Test***" means the Net Heat Rate Test described in Exhibit E and the Test Protocols and Procedures.

"***Neutral Arbitrator***" has the meaning set forth in Section 12.9(b).

"***New Mexico Water***" means New Mexico Water Services Group or any successor agency.

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

"***Non-Defaulting Party***" means the Party other than the Defaulting Party.

"***Off-Peak Months***" means each of the following Months: January, February, March, April, May, October, November and December,

"***On-Peak Months***" means each of the following Months: June, July, August and September.

"***Operating Committee***" means the committee appointed pursuant to Section 9.4 and having the responsibilities set forth therein and such other responsibilities as the Parties may agree from time to time agree in writing.

"***Operating Committee Representatives***" has the meaning set forth in Section 9.4(a).

"***Operating Procedures***" has the meaning set forth in Section 9.4(c).

"***Operating Records***" means all records of operations at the Facility, including operating logs and records, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility.

"***Original PPA***" has the meaning set forth in the recitals to this Agreement.

"***Party***" or "***Parties***" has the meaning set forth in the first paragraph of this Agreement.

"***Party Representative***" or "***Parties' Representative***" has the meaning set forth in Section 12.9(a).

"***Permits***" means all permits owned or held by PNM for the construction and operation of the Facility, including: Acid Rain Permit No. P220A issued by the Air Quality Bureau of New Mexico Environment Department, the Site Design Review Permit approved by the Valencia County Planning and Zoning Commission on August 13, 2002, and the Title V Operating Permit No. P220-R2 by the New Mexico Environment Department, Air Quality Bureau on January 10, 2022.

"***Person***" means any individual, sole proprietorship, partnership, corporation, trust, unincorporated organization or joint venture, or Governmental Authority or political subdivision thereof.

"***PNM***" has the meaning set forth in the first paragraph of this Agreement.

"***PNM Event of Default***" has the meaning set forth in Section 11.3.

"***PNM Heat Rate Payment***" has the meaning set forth in Section 7.3(d).

"***PNM Representative***" means the individual designated by PNM pursuant to Section 12.2 whose responsibilities are as set forth therein.

"***PNM Required Permits***" means the permits, consents, approvals, clearances, filings, exemptions, licenses, inspections, and authorizations required to be obtained by PNM from any Governmental Authority to perform its obligations under this PPA.

"***PNM's Interconnection Facilities***" means those facilities necessary to establish a physical interconnection between PNM's existing electric system and Seller's Interconnection Facilities at the "Point of Change of Ownership" (as defined in the Interconnection Agreement), including but not limited to breakers, bus work, land easements, bus relays, communications circuits, and associated equipment, and any replacement or additional equipment that PNM may install due to equipment failure or to meet changed industry standards, as more particularly described in the Interconnection Agreement.

"***Point of Delivery***" means the "Point of Interconnection" as such term is defined in the Interconnection Agreement.

"***PPA***" means this Power Purchase Agreement between Seller and PNM, including the Exhibits attached hereto.

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

"***Pre-Delivery Term Period***" means the period starting on the Effective Date and extending through but not including the Delivery Term Start Date.

"***Project Agreements***" means each agreement entered into between Seller and PNM in connection with the Facility (including this PPA), each material agreement entered into by or on behalf of Seller for the operation and maintenance of the Facility and for the Facility Upgrades, the Interconnection Agreement, and the Gas Interconnection Agreement.

"***PSM***" means Power Systems Mfg., LLC, or an affiliate thereof.

"***Required Permits***" means PNM Required Permits and Seller Required Permits.

"***Scheduled Energy***" has the meaning set forth in Section 6.3.

"***Scheduled Outage/Derating***" means a planned interruption/reduction of the Facility's generation that both (i) has been coordinated in advance with PNM, with a mutually agreed start date and duration, and (ii) is required for inspection, or preventive or corrective maintenance.

"***Season***" means each Winter Season and each Summer Season, as the case may be.

"***Seasonal Capacity***" for a Season means the net electrical energy (expressed in kW) of the Facility at the Point of Delivery (less any generation utilized by the Facility for auxiliary equipment), as determined pursuant to the most recent Seasonal Capacity Test successfully performed during such Season, when corrected to Base Ambient Conditions and otherwise as determined in accordance with the applicable Test Protocols and Procedures and this Agreement.

"***Seasonal Capacity Test***" means the Seasonal Capacity Test described in Exhibit D and the Test Protocols and Procedures.

"***SEC***" means the United States Securities and Exchange Commission or any successor agency.

"***Security***" means the funds, letter of credit, guarantee, performance bond or instrument that Seller is required to establish and maintain, pursuant to Section 10.1, as security for Seller's performance under this PPA, together with all payments thereon and proceeds thereof, and additions thereto and substitutions therefor, whether now held or hereafter held by, on behalf of, or for the benefit of, PNM.

"***Seller***" has the meaning set forth in the first paragraph of this Agreement.

"***Seller Event of Default***" has the meaning set forth in Section 11.1.

"***Seller FERC Permits***" means Seller's market-based rate tariff on file with FERC.

"***Seller Heat Rate Payment***" has the meaning set forth in Section 7.3(c).

"***Seller Representative***" means the individual designated by Seller pursuant to Section 12.2 whose responsibilities are as set forth therein.

"***Seller Required Permits***" means any and all permits, consents, approvals, clearances, filings, exemptions, licenses, inspections, and authorizations required from or by any Governmental Authority to own or operate the Facility or for Seller to perform its obligations hereunder in compliance with applicable Law, including the Seller FERC Permits.

"***Seller's Financial Statements***" has the meaning set forth in Section 12.11(c)(i).

"***Seller's Interconnection Facilities***" means the "Interconnection Customer's Interconnection Facilities" as such term is defined in the Interconnection Agreement.

"***Senior Debt***" means the obligations of Seller to any lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

"***Senior Lender***" means, collectively, any lender(s) providing any Senior Debt and any successor(s) or assigns thereto.

"***Site***" means the real property at the Valencia development site near Albuquerque, New Mexico on which Seller operates the Facility, described as Tract Numbered 4-C-1-A-1, Lands of Rio Grande Industrial Park, LTD, and Vacation of easements as shown, within the Tome Grant, Valencia County, New Mexico, as the same is shown and designated on said plat filed with the Valencia County Clerk on June 20, 2002, in Cabinet J, folio 414, said plat being rerecorded on August 13, 2002 in Plat Book J, folio 425, together with easements created or to be created for the benefit of Tract Numbered 4-C-1-A-1 (as described in that certain Purchase Option Agreement, dated October 3, 2021, between Rio Grande Industrial Park Ltd., Co. and PNM (as assignee of Valencia Energy, LLC), as amended) including but not limited to the easements to be located on Tract Numbered 4-E-1-A-1, and Christine Drive and Navarro Drive in Valencia County, New Mexico.

"***SRSG***" means the Southwest Reserve Sharing Group or any successor agency.

"***Start Charge***" for a particular point in time means the Start Charge as determined in accordance with Section 7.5(b).

"***Start Request***" means instructions from PNM to start the turbine from a stopped position to begin generation at the level specified by PNM, which instructions shall specify the time at which delivery of the electrical energy shall commence.

"***Summer Season***" means a period from and including May through and including September.

"***Taxes***" means any and all federal, state and local ad valorem, property, occupation, severance, generation, first use, utility, privilege, gross receipts, sales, use, consumption, excise

and other taxes, governmental charges, duties, levies, tariffs, licenses, fees, permits and assessments, other than taxes based on income or net worth.

"***Technical Expert***" means a Person who, at the time of selection, (i) has reasonable professional qualifications and practical experience in the subject matter of the dispute, (ii) has no interest or duty which conflicts or may conflict with his or her functions as a Technical Expert (such individual being required to fully disclose any such interest or duty prior to its, his or her appointment) and (iii) is not as of the date of selection and has not been within two (2) years prior to the date of selection, an employee, contractor or consultant of either of the Parties or any of their Affiliates.

"***Term***" means the period commencing on the Effective Date and ending at Hour Ending 24:00 MST on the Delivery Term End Date, or if applicable, Hour Ending 24:00 MST on the effective date of termination of this Agreement is earlier terminated in accordance with the terms hereof.

"***Test Protocols and Procedures***" means those protocols and procedures set forth in Exhibit L.

"***Tests***" mean the tests to be performed in connection with any Seasonal Capacity Test, Net Heat Rate Test, and WECC and SRSG tests performed with respect to the Facility.

"***Transporter***" means the interstate pipeline companies, acting in the capacity of a transporter, transporting Gas for PNM to the Fuel Point of Delivery.

"***Transwestern***" means Transwestern Pipeline Company.

"***Upgrade Period***" has the meaning set forth in Section 3.3.

"***VOM Charge***" has the meaning set forth in Section 7.5(a).

"***VOM Ratio***" has the meaning set forth in Section 7.5(a).

"***WECC***" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"***Winter Season***" means a period from and including October through and including April.

"***WPM***" means the wholesale power marketing function of PNM.

ARTICLE II
TERM AND SURVIVAL OF TERMS

Subject to Section 19.15, this PPA shall become effective as of the Effective Date and shall remain in full force and effect through the Term. Applicable provisions of this PPA shall continue in effect after the Term to the extent necessary to satisfy the terms and conditions of this PPA and, as applicable, to provide for: final billings and adjustments related to the period prior to termination of this PPA or expiration of the Term, repayment of any money due and owing either Party

pursuant to this PPA, return of remaining Security, if any, and the indemnifications specified in this PPA. Without limiting the foregoing, all provisions, rights and obligations hereunder which by their terms, nature or by implication are intended to survive termination or expiration of the Term shall survive.

ARTICLE III
FACILITY; OPERATION

3.1 Summary Description. Seller has constructed at the Site and owns, operates, and maintains the Facility, which is a simple-cycle, natural gas-fueled electric generation facility approved for interconnection up to 173 MW, as more fully described in Exhibit B.

3.2 Net Capability. The "Net Capability" of the Facility shall be determined prior to the Delivery Term Start Date and from time to time from and after the Delivery Term Start Date as set forth in this Section 3.2. As of the Delivery Term Start Date, the Net Capability of the Facility shall be equal to the Delivery Term Start Date Capacity. Thereafter, a Seasonal Capacity Test shall be performed, in accordance with the terms and conditions set forth herein, at least once per Delivery Year, with Seasonal Capacity Tests for the Winter Season and for the Summer Season being performed on alternating Delivery Years. A Party may request that additional Seasonal Capacity Test(s) for a Season be performed in accordance with Exhibit D. Each Seasonal Capacity Test shall be performed at a date and time as mutually agreed to by the Parties, shall be performed in accordance with the applicable Test Protocols and Procedures and the requirements of this Agreement, and shall be repeated as necessary until it is successfully completed. Upon successful completion of each Seasonal Capacity Test, the Net Capability of the Facility shall be determined. The Net Capability of the Facility shall be equal to the average of (a) the Seasonal Capacity of the then current Season, and (b) the Seasonal Capacity of the immediately preceding Season.

3.3 Modifications to the Facility. After the Effective Date but prior to the Delivery Term Start Date, Seller shall perform, or cause to be performed, the Facility Upgrades. Seller shall require a five-week period to perform the Facility Upgrades (the "***Upgrade Period***"). Seller and PNM shall coordinate to identify a mutually agreeable time to schedule the Upgrade Period. The Upgrade Period shall be included in SME and shall not negatively impact the Availability Factor for any Month during the Upgrade Period. Notwithstanding the foregoing, Seller shall not modify, alter, expand or otherwise change the Facility during the Delivery Term without the prior written consent of PNM, such consent not to be unreasonably withheld or delayed, except (i) as required by Good Utility Practices or applicable Law, or (ii) such modifications, alterations, expansions or other changes that could not reasonably be expected to materially reduce the Net Capability of the Facility or materially and adversely impact the capabilities of the Facility.

3.4 Requirements and Compliance Standards For Dispatchability. The Requirements and Compliance Standards For Dispatchability are attached hereto as Exhibit A.

3.5 Facility Contracts and Documents. To assure PNM that the Facility is capable of performing in accordance with the terms of this PPA, from and after the Delivery Term Start Date, Seller shall provide to PNM copies of all material contracts and documents requested by PNM which pertain to the operation of the Facility, and the ability of Seller to deliver power and energy to PNM at the Point of Delivery.

3.6 PNM's Rights of Inspection and Review. During the Delivery Term, PNM shall have the right to monitor the testing and operation of the Facility, and Seller shall comply with all reasonable requests of PNM with respect to these events. PNM and its designated representatives and agents shall have the right to be present during any testing of the Facility. PNM shall have access to and the right to inspect the Facility at any time upon notice to Seller. Seller shall cooperate in such physical inspections of the Facility as may be reasonably requested by PNM during the Term.

3.7 Test Protocols and Procedures. Each of the Tests required by this Agreement shall be performed in accordance with the Test Protocols and Procedures and the requirements of this Agreement. Subject to the terms and conditions of this Agreement, each Test shall be repeated as necessary until it is successfully completed.

3.8 Testing. At least four (4) days prior to performing any Test or other system or utility test with respect to the Facility during the Delivery Term, Seller shall deliver written notice to PNM specifying the time and date for commencement of such Test, and PNM shall have the right to be present at and observe such Test. Seller shall promptly notify PNM of any proposed change in the schedule of such Tests and may not conduct any Test or other system or utility test, under such proposed changed schedule unless Seller has delivered a written notice to PNM of such change at least four days in advance of such rescheduled Test. Seller shall provide a written report of the results of each such Test to PNM, which report shall include sufficient detail and supporting documentation for PNM to make an independent determination regarding the performance and results of such Test. Upon request by PNM, Seller shall perform such SRSG and WECC Tests as requested, in accordance with the procedures and criteria established by SRSG or WECC, as applicable. Seller does not warrant any particular results of such Tests; *provided; however*, that the foregoing shall not be deemed to reduce, impair or alter any obligation, requirement or duty of Seller hereunder, including, without limitation, Seller's obligation to operate and maintain the Facility according to Good Utility Practices and applicable Law.

3.9 No Waiver or Warranty. PNM's review and inspection of the Facility or any contracts or documents related thereto shall not be construed as endorsing the design thereof nor as any warranty of safety, durability, or reliability of the Facility. No review or inspection made, or acceptance or approval given by PNM shall relieve, reduce or impair any of Seller's duties, responsibilities or obligations hereunder or under the Project Agreements.

ARTICLE IV
GAS SUPPLY AND INTERCONNECTION

4.1 Gas Supply, Delivery and Receipt.

(a) During the Delivery Term, PNM shall deliver or cause to be delivered to Seller at the Fuel Point of Delivery, at PNM's sole cost and expense (except as otherwise provided herein), all Gas required for Seller to start-up the Facility and produce the Scheduled Energy.

(b) Seller shall accept all Gas delivered by PNM hereunder at the Fuel Point of Delivery, and shall convert Gas delivered by PNM hereunder to electricity for delivery to PNM at the Point of Delivery.

4.2 Quality and Measurement. All Gas delivered by PNM during the Delivery Term shall meet the pressure and quality requirements of the Transporter that are in effect at the time the Gas is delivered. In no event shall Seller be obligated to accept delivery of Gas for consumption at the Facility that does not meet the quality requirements of the Transporter if such non-compliant Gas would have a material and adverse affect upon the operating integrity of the Facility's equipment or the warranties applicable to such equipment. The unit of quantity measurement for purposes of the Gas delivered by PNM hereunder shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Transporter, and such measurements shall conclusively establish the quantity of Gas delivered by PNM to the Fuel Point of Delivery for all purposes under this Agreement.

4.3 Change in Quality. The Gas quality requirements of Transwestern as of the Effective Date are attached hereto as Exhibit G. If the Gas quality requirements of a Transporter change after the Effective Date such that Gas satisfying such new quality requirements does not meet the quality specifications set forth in Exhibit G, or if the pressure requirements of Transporter change to below 55 psig at the Fuel Point of Delivery, then (a) if Gas satisfying such new quality or pressure requirements would have a material and adverse affect upon the operating integrity of the Facility's equipment or the warranties applicable to such equipment, then PNM shall reimburse Seller for the costs and expenses reasonably incurred by Seller for any modifications to the Facility or to the equipment as required for the Facility to be able to accept and use such Gas, and (b) if despite the modifications to the Facility or equipment implemented, Gas satisfying such new quality requirements has a material and adverse affect on the Facility's capability to achieve the Guaranteed Net Heat Rate, then the Guaranteed Net Heat Rate shall be adjusted as appropriate based upon the impact of the change in Gas quality as agreed to by the Parties pursuant to good faith negotiations; *provided* that, in each case, (i) Seller promptly notified PNM in writing of the impact of the new Gas quality or pressure requirements, (ii) Seller worked cooperatively and in good faith with PNM to determine the necessary modifications to the Facility or equipment, and (iii) Seller took all reasonable steps to mitigate the cost of the necessary modifications to the Facility or equipment and the impact of the new Gas quality or pressure requirements.

4.4 Risk of Loss and Title. Possession of, and risk of loss of, Gas delivered by PNM hereunder shall transfer from PNM to Seller at the Fuel Point of Delivery. PNM shall be deemed to be in control of, and shall have responsibility for and assume any liability with respect to, the Gas delivered by PNM hereunder prior to the Fuel Point of Delivery (including, without limitation, any damages or injury resulting from or caused by such Gas while it is deemed to be in PNM's possession and control). Seller shall be deemed to be in control of, and shall have responsibility for and assume any liability with respect to, such Gas at and after the Fuel Point of Delivery (including, without limitation, any damages or injury resulting from or caused by such Gas while it is deemed to be in Seller's possession and control). Title to the Gas delivered by PNM hereunder shall at all times remain with PNM.

4.5 Transportation. PNM shall have the sole responsibility for transporting the Gas to be delivered hereunder to the Fuel Point of Delivery, and Seller shall have the sole responsibility for accepting Gas delivered hereunder at the Fuel Point of Delivery and transporting such Gas from the Fuel Point of Delivery to the Facility.

4.6 Outages or Interruption in Gas Deliveries. Seller shall notify PNM as soon as reasonably practical in the event of an outage or curtailment of the Facility or any other event affecting the Facility's capability to generate electricity during the Delivery Term. PNM shall notify Seller as soon as reasonably practicable in the event of the unavailability or curtailment of Gas for delivery to Seller hereunder. In the event that PNM fails to deliver Gas to the Fuel Point of Delivery for any reason, Seller shall be excused from its obligation to deliver Scheduled Energy to the extent Seller is unable to generate such energy as a result of the failure of PNM to deliver Gas. The foregoing remedy shall be the sole and exclusive remedy and measure of damages for PNM's failure to deliver Gas to the Fuel Point of Delivery, and Seller hereby waives, releases and discharges any and all other remedies, claims, damages and losses, at law or in equity, except for the obligation to make all payments pursuant to Article VII, including the Monthly Capacity Payment.

ARTICLE V
PURCHASE AND SALE OF CAPACITY, ENERGY AND BENEFITS

5.1 Delivery Term. Subject to the terms and conditions hereof, during the Delivery Term, Seller shall sell and deliver to PNM, and PNM shall purchase and accept from Seller, at the Point of Delivery, the Contract Capacity, the Scheduled Energy and all other Facility Benefits. Seller shall produce and deliver the Scheduled Energy to the Point of Delivery; *provided* that Seller will not be required to produce and deliver Scheduled Energy to PNM hereunder upon the occurrence and during the continuance of any of the following events: (a) Forced Outage; (b) Scheduled Outage/Derating; (c) Force Majeure, to the extent provided in Article XIII; and (d) PNM's failure to deliver Gas to the Fuel Point of Delivery, as provided in Section 4.6. Without limiting the foregoing, Seller shall not curtail or interrupt deliveries of Contract Capacity, Scheduled Energy or other Facility Benefits for economic reasons.

5.2 Delivery and Receipt. Seller shall be responsible for, and shall provide all services required for, delivery of the Contract Capacity, energy and other Facility Benefits from the Facility to the Point of Delivery. PNM shall be responsible for, and shall provide all services required for, receipt of the Contract Capacity, energy and Facility Benefits sold hereunder at the Point of Delivery and transmission of such energy from the Point of Delivery. The quantity of energy delivered to the Point of Delivery by Seller for sale to PNM hereunder shall be measured and determined in accordance with the Interconnection Agreement.

5.3 Title and Risk of Loss. Title to, possession of and risk of loss of energy, capacity and Facility Benefits shall transfer from Seller to PNM at the Point of Delivery. Seller warrants that it shall have the right to convey and will transfer good and merchantable title to all energy, capacity and Facility Benefits sold hereunder and delivered by it to PNM, free and clear of all liens, encumbrances, and claims. As between the Parties, Seller shall be deemed to be in control of the capacity, energy and Facility Benefits of the Facility prior to the Point of Delivery and PNM shall be deemed to be in control of such capacity, energy and Facility Benefits from and after the Point of Delivery.

5.4 Exclusive Benefit. Notwithstanding anything contained herein to the contrary, all capacity of the Facility, energy generated by the Facility and other Facility Benefits are for the exclusive benefit of PNM during the Delivery Term. PNM shall have the sole and exclusive right

during the Delivery Term to direct the production of energy by the Facility at any level up to the Net Capability and to receive all energy generated by the Facility and all capacity and other Facility Benefits. Seller shall not sell, transfer, assign or divert any capacity of the Facility, energy generated by the Facility or any other Facility Benefit to any Person other than PNM during the Delivery Term.

ARTICLE VI
CONTRACT CAPACITY AND SCHEDULED ENERGY

6.1 Contract Capacity. The capacity provided and sold by Seller and purchased by PNM hereunder shall be all of the generating capacity, including all uncommitted and undispatched capacity, available at any time during the Delivery Term from the Facility (the "***Contract Capacity***").

6.2 Availability of Facility. For each day during the Delivery Term, Seller will deliver to PNM by facsimile (or such other method as specified in the Operating Procedures) a written plan indicating for each Hour during such day the quantity of energy available for delivery by Seller to PNM (each a "***Daily Availability Plan***"), which plan shall be delivered no later than 8:00 a.m. MST of the Business Day immediately preceding such day. In the event that Seller fails to deliver a Daily Availability Plan by the time required for a particular day, the Daily Availability Plan for such day shall be deemed received by PNM for all purposes herein and deemed to indicate an amount of energy equal to the Net Capability available from the Facility for each Hour during such day.

6.3 Dispatch. During the Delivery Term, PNM shall have the right to determine the dispatch of the Facility, including the Facility's start-ups, shutdowns and generation loading levels. PNM has no obligation to dispatch the Facility at any particular level of generation, and PNM may it is sole discretion elect to not dispatch the Facility for extended periods of time; *provided* that PNM shall dispatch the Facility as reasonably required to perform Seasonal Capacity Tests and Net Heat Rate Tests hereunder; and *provided further* Seller shall have the right, at Seller's expense and upon forty-eight (48) hours prior notice, to start the Facility one (1) time every thirty (30) days to bring the turbine up to sync idle during Off-Peak Months (other than January and December). PNM shall make reasonable efforts to provide Seller at least twenty-four (24) hours advance notice of the Facility's generation levels anticipated by PNM; *provided* that such notice shall be subject to and may be pre-empted by PNM's Automatic Generation Control, subsequent instructions of PNM, and by real-time operating conditions on PNM's electric system such as, but not limited to, Emergency, reliability, stability and economic conditions, All energy to be generated by the Facility pursuant to the dispatch instructions of PNM is referred to herein as "***Scheduled Energy***."

ARTICLE VII
PAYMENT CALCULATIONS

7.1 Monthly Capacity Payment. For each Month during the Delivery Term, PNM shall pay to Seller, in accordance with and subject to the terms hereof, an amount equal to the product of (x) the Availability Factor for such Month *multiplied by* (y) the Net Capability *multiplied by* (z) the Capacity Charge (the "***Monthly Capacity Payment***"). The Monthly Capacity Payment shall be prorated in regard to any partial Month at the beginning or the end of the Delivery Term based

on the number of days in such Month that are within the Delivery Term divided by the total number of days in such Month. In addition, the Monthly Capacity Payment shall be subject to adjustment as follows:

(a) For each On-Peak Month during the Delivery Term, the Monthly Capacity Payment for such On-Peak Month shall be reduced by 0.1% for each 0.1% that the Availability Factor for such Month is below ninety-seven percent (97%).

(b) For each Month during the Delivery Term, the Monthly Capacity Payment for such Month shall be reduced by an amount equal to the product of (i) the number of Failed Starts during such Month *multiplied by* (ii) twelve thousand dollars ($12,000).

7.2 Monthly Variable O&M Payment. For each Month during the Delivery Term, PNM shall pay to Seller, in accordance with and subject to the terms hereof, an amount equal to the product of (a) the aggregate amount of energy (in MWh) generated by the Facility and delivered to PNM at the Point of Delivery during such Month *multiplied by* (b) the VOM Charge.

7.3 Heat Rate Adjustment Payment.

(a) The guaranteed Net Heat Rate for the Facility for the first Delivery Year is (i) 9800 Btu (LHV) per kWh during the Summer Season, and (b) 9500 Btu (LHV) per kWh during the Winter Season (at assumed ambient conditions of ninety-five degrees (95°) Fahrenheit and nineteen percent (19%) relative humidity), with four tenths of one percent (.4%) degradation for each Delivery Year thereafter (the "***Guaranteed Net Heat Rate***").

(b) The "***Facility Net Heat Rate***" shall be determined from time to time during the Delivery Term as set forth in this Section 7.3(b). As of the Delivery Term Start Date, the Facility Net Heat Rate shall be equal to the Delivery Term Start Date Net Heat Rate. Thereafter, the Facility Net Heat Rate shall be the Net Heat Rate of the Facility as determined by the most recent Net Heat Rate Test performed pursuant to this Agreement and the Test Protocols and Procedures, the results of which are accepted by PNM in writing. The Facility Net Heat Rate as so determined shall be effective for all purposes hereunder as of the first day of the Month during which the Net Heat Rate Test was performed. Following the Delivery Term Start Date, PNM shall have the right at any time and from time to time to request and schedule, at PNM's expense, a Net Heat Rate Test by providing written notice to Seller at least five (5) Business Days prior to such scheduled test. Following the Delivery Term Start Date, Seller shall have the right to request a Net Heat Rate Test, at Seller's expense, not more than three (3) times during any Delivery Year by providing written notice to PNM at least five (5) Business Days prior to the time such test is requested to be performed. Following receipt of any such notice, PNM shall schedule the Net Heat Rate Test so as not to interfere with the actual or anticipated dispatch schedule of the Facility.

(c) For each Month during the Delivery Term, if the Facility Net Heat Rate is greater than 101.5% of the then applicable Guaranteed Net Heat Rate, Seller shall pay to PNM, in accordance with and subject to the terms hereof, an amount equal to the Seller Heat Rate Payment determined as follows:

"***Seller Heat Rate Payment***" equals:

Monthly Fuel Costs x [1 - ((101.5% x Guaranteed Net Heat Rate)/Facility Net Heat Rate)]

(d) For each Month during the Delivery Term, if the Facility Net Heat Rate is less than 98.5% of the then applicable Guaranteed Net Heat Rate, PNM shall pay to Seller, in accordance with and subject to the terms hereof, an amount equal to the PNM Heat Rate Payment determined as follows:

"***PNM Heat Rate Payment***" equals:

Monthly Fuel Costs x [((98.5% x Guaranteed Net Heat Rate)/Facility Net Heat Rate) - 1]

7.4 Monthly Starts Payment. For each Month during the Delivery Term, PNM shall pay to Seller, in accordance with and subject to the terms hereof, an amount equal to the product of (a) the number of Actual Starts during such Month *multiplied by* (b) the Start Charge.

7.5 Annual Adjustment.

(a) As of the Delivery Term Start Date, the "***VOM Charge***" is $5.00 per MWh. On each annual anniversary of the Delivery Term Start Date, the VOM Charge shall be adjusted and shall equal the product of (i) the then current VOM Charge *multiplied by* (ii) the VOM Ratio, where:

"***VOM Ratio***" equals the sum of (A) the Chemical Factor *multiplied by* 0.25, *plus* (B) the Major Maintenance Factor *multiplied by* 0.75.

"***Chemical Factor***" means the quotient, rounded to the nearest third decimal place, of (A) BLS Series ID WPU0613, as published for the month of March of the current calendar year, *divided by* (B) the U.S. Producer Price Index for Basic Inorganic Chemicals, BLS Series ID WPU0613, as published for the month of March of the previous calendar year.

"***Major Maintenance Factor***" means the greater of (A) 1.02 or (B) the sum of (x) the Major Maintenance Labor Factor *multiplied by* 0.50, *plus* (y) the Materials Factor *multiplied by* 0.50.

"***Major Maintenance Labor Factor***" means the quotient, rounded to the nearest third decimal place, of (A) the National Labor Employment Index for Average Hourly Earnings of Production Workers for turbine and turbine generator set units, not seasonally adjusted, BLS Series ID CEU 3133360006, as published for the month of March of the current calendar year, *divided by* (B) the National Labor Employment Index for Average Hourly Earnings of Production Workers for turbine and turbine generator set units, not seasonally adjusted, BLS Series ID CEU 3133360006, as published for the month of March of the previous calendar year.

"***Materials Factor***" means the quotient, rounded to the nearest third decimal place, of (A) the U.S. Producer Price Index for Fabricated Steel Plate, not seasonally adjusted, BLS Series ID WPU1076, as published for the month of March of the current calendar year, divided by (B) the U.S. Producer Price Index for Fabricated Steel Plate, not seasonally adjusted, BLS Series ID WPU1076, as published for the month of March of the previous calendar year.

(b) As of the Delivery Term Start Date, the "Start Charge" is eight thousand dollars ($8,000). On each annual anniversary of the Delivery Term Start Date, the Start Charge shall be adjusted and shall equal the product of (i) the then current Start Charge *multiplied by* (ii) the Major Maintenance Factor.

(c) All calculations of the VOM Charge and the Start Charge shall be rounded to the nearest third decimal place. In the event any of the indices used to calculate such annual adjustments are published as "preliminary," such preliminary index shall be utilized for such calculation, and when the "final" index is published, the adjustment shall be calculated utilizing such final index and all amounts invoiced using the preliminary adjustments will be appropriately adjusted to reflect such final VOM Charge and Start Charge, as the case may be, (with corresponding payment adjustments) in the first invoice submitted by Seller following the publication of the final index.

7.6 Replacement Index. In the event that any index, publication, posting, exchange or similar reference, benchmark or data source referenced herein should cease to exist, then the Parties shall mutually agree to another comparable reference or method for determining the applicable variable.

7.7 Change In Law. If, after the Effective Date, any material increase in the cost to Seller for the operation of the Facility occurs directly as a result of a change in applicable Law or binding order of any Governmental Authority, from those Laws or orders in effect as of the Effective Date, but not including any Law or binding order of any Governmental Authority which is not specific to energy production (such as, by way of example only, changes in income taxes, payroll taxes, worker's compensation or other employment taxes or levies of similar nature); and such increased costs cannot be avoided by commercially reasonable means, then Seller shall be entitled to an appropriate adjustment to the Monthly Capacity Payment, to be applied ratably over the remainder of the Delivery Term, based upon the nature of the change in order to reimburse Seller for such costs as agreed to by the Parties pursuant to good faith negotiations.

7.8 Greenhouse Gas Emissions Tax. Notwithstanding anything to the contrary in Section 19.2, PNM shall reimburse Seller for newly imposed taxes, charges or fees for Greenhouse Gas attributable to the generating unit of the Facility during the Delivery Term, within forty-five (45) days after PNM's receipt from Seller of documentation establishing, to PNM's reasonable satisfaction: (a) that Seller is actually liable for the tax, charge or fee for Greenhouse Gas attributed to the operation of the generating unit of the Facility during the Delivery Term; (b) that the tax, charge, or fee was not enacted or effective as of the Effective Date, or scheduled as of the Effective Date to become enacted or effective; (c) the specific amount of the tax, charge, or fee; (d) that the tax, charge or fee was imposed upon Seller by an authorized Governmental Authority having jurisdiction over the generating unit of the Facility; (e) that Seller has paid, or caused to be paid,

the Governmental Authority identified under clause (d) the full amount of the tax, charge or fee for which Seller seeks reimbursement from PNM under this Section 7.8, (f) that Seller took commercially reasonable steps to mitigate the cost or amount of such tax, charge or fee, *provided* that Seller shall not be required to make capital improvements to the generating unit of the Facility, and (g) in no event shall PNM be liable for payment or reimbursement of any interest or penalties arising out of or assessed with respect to any taxes, charges or fees for Greenhouse Gas.

7.9 Water Supply. To the extent that PNM has not already elected to transfer or lease certain of its water rights and subject to an election by PNM as set forth in this Section 7.9, Seller shall obtain raw water supply for the Facility from New Mexico Water. PNM may elect, in its discretion, to transfer or lease certain of its water rights to a well to be constructed at the Site or to a well to be utilized by New Mexico Water. In the event PNM makes such an election, the Parties shall cooperate with each other and shall use commercially reasonable efforts to agree upon and execute a mutually agreeable amendment to this Agreement, and such other agreements as reasonably necessary, to reflect the appropriate adjustments to be made to this Agreement as a result of the supply of water from the rights transferred or leased to a well at the Site, and the construction of such well at the Site, or to reflect the supply of water from such water rights if transferred or leased to New Mexico Water.

7.10 Property Tax, Water Supply and Certain O&M. PNM shall reimburse Seller for (a) all property taxes and property assessments due and payable with respect to the Facility, up to a cap of one million dollars ($1,000,000) per calendar year, (b) all costs, charges and fees charged to Seller by New Mexico Water for the supply of raw water to maintenance, transportation of water to the Facility and necessary interconnection facilities, and (c) all expenses, including overhead, associated with operation, maintenance, repair and replacement of PNM's Interconnection Facilities charged to Seller pursuant to Section 10.5 of the Interconnection Agreement, within forty-five (45) days after PNM's receipt from Seller of documentation establishing to PNM's reasonable satisfaction: (i) that Seller is actually liable for such tax, charge, fee or expense, (ii) the specific amount of the tax, charge, fee or expense, (iii) with respect to property taxes and property assessments, that the tax or assessment was imposed upon Seller by an authorized Governmental Authority having jurisdiction over the Facility or Site, as applicable, (iv) that Seller has paid the tax, charge, fee or expense, (v) that Seller took commercially reasonable steps to mitigate the cost or amount of such tax, charge, fee or expense, and (vi) in no event shall PNM be liable for payment or reimbursement of any interest or penalties arising out of or assessed with respect to any taxes, charges, fees or expenses.

ARTICLE VIII
BILLING AND PAYMENT

8.1 Billing Statement and Invoices.

(a) The billing period shall be for a Month. Commencing the first Month after the Delivery Term Start Date, no later than ten (10) Business Days after receiving the information specified in Sections 9.3(b) and 12.5 and such other information from Seller as reasonably requested by PNM to enable it to prepare an invoice, PNM shall prepare and provide to Seller, by first-class mail or other method as established in the Operating Procedures, a statement showing amounts payable by PNM to Seller under the terms of this PPA, and an invoice for any amounts

payable by Seller to PNM under the terms of this PPA, for the previous Month. The statement, and, as applicable, the invoice, will show metered energy from the Facility, all billing parameters, rates and factors, and any other data reasonably pertinent to the calculation of amounts payable or adjustments to previously invoiced amounts due to either Seller or PNM, respectively. PNM shall not be limited to Seller's reported operational data in calculating the amounts payable by Seller hereunder, and PNM may make that calculation on the basis of all information available to PNM, including, but not limited to, results of Seasonal Capacity Tests, Net Heat Rate Tests, results of ramp rate tests, and Facility responses to requests for changes in operation.

(b) After receiving the statement of amounts payable to Seller provided by PNM pursuant to Section 8.1(a), Seller shall provide to PNM, by first-class mail or other method as established in the Operating Procedures, an invoice for the amount payable to Seller by PNM for the applicable Month. If Seller disputes any amount in the statement provided by PNM, Seller shall include with Seller's invoice an explanation of the items in dispute, as well as all supporting documentation upon which Seller relies to dispute the PNM statement. Billing disputes shall be resolved in accordance with Section 8.3 of this PPA.

8.2 Late Payments. Unless otherwise specified herein, amounts owing under this PPA shall be due and payable by check, by electronic funds transfer, or by wire transfer, as designated by the owed Party in its invoice, on or before the fifteenth (15th) Business Day following receipt of the billing invoice; *provided* that if any payment is due on a day that is not a Business Day. such payment shall instead be due on the next Business Day. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the due date. If the amount due is not paid on or before the due date, a late payment interest charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment interest charge shall be calculated based on an annual interest rate equal to the Interest Rate on the unpaid amount from the due date until such overdue amount is paid in full.

8.3 Billing Disputes. If the PNM statement of amounts payable to Seller provided under Section 8.1(a) and Seller's invoice provided under Section 8.1(b) do not reflect the same amount being owed to Seller, PNM shall pay Seller at least the amount set forth on PNM's statement provided under Section 8.1(a) (but, for the avoidance of doubt, shall not be obligated to pay more than the amount reflected in Seller's invoice) on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Section 12.9. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of Section 8.2. Either Party at any time may offset against any and all undisputed amounts that may be due and owed by such Party to the other Party under this PPA, any and all undisputed amounts, including damages and other payments, that are owed to such Party by the other Party pursuant to this PPA. In the event that any amount offset by a Party against any other amounts due and owing under this PPA is later determined not to have been owed, the Party effecting the setoff shall then pay such amount to the other Party, with interest from the date of offset calculated in accordance with the provisions of Section 8.2. 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 8.2.

8.4 Form of Statements and Invoices. The Operating Committee shall determine and set forth in the Operating Procedures the form of statements and invoices to be submitted by the Parties hereunder.

ARTICLE IX
OPERATIONS AND MAINTENANCE

9.1 Scheduled Maintenance.

(a) At least sixty (60) days prior to the Delivery Term Start Date, Seller shall provide a maintenance schedule for the Facility for the first calendar year (or portion thereof) within the Delivery Term. Thereafter, every September, Seller shall submit an annual maintenance schedule for the next calendar year (or portion thereof) within the Delivery Term and an estimated long-term maintenance schedule that will encompass the four (4) calendar years thereafter. Each annual maintenance schedule shall identify each planned interruption and/or reduction of the Facility's generation, including the duration thereof. Each annual maintenance schedule for the next calendar year shall be subject to approval of PNM. If PNM does not approve of the proposed annual maintenance schedule, PNM shall notify Seller in writing within thirty (30) days after receipt of the proposed annual maintenance schedule from Seller. Either Party may request changes to any annual maintenance schedule approved by PNM hereunder, and the other Party shall reasonably approve any such requested schedule change that does not have a material adverse effect on such Party and shall cooperate in good faith with the requesting Party with respect to any such changes requested. Seller shall not make any changes to any annual maintenance schedule approved by PNM hereunder without the prior written approval of PNM, which approval shall not be unreasonably withheld or delayed, except as otherwise provided in Section 9.1(b). Seller shall furnish PNM with reasonable advance notice of any proposed change in the annual maintenance schedule. Advance notice of a change in the annual maintenance schedule as set forth below shall be considered reasonable advance notice:

Scheduled Outage Expected Duration	Advance Notice to PNM
Less than 2 days	at least 24 hours
2 to 5 days	at least 7 days
Major maintenance (over 5 days)	at least 90 days

(b) During the Delivery Term and after one thousand (1,000) Actual Starts, Seller shall have the option to include in the annual maintenance schedule an outage for five weeks (to perform multi-year major maintenance) that will be considered a Scheduled Outage/Derating. Notwithstanding the foregoing, during the Delivery Term, Seller shall not schedule any interruption or reduction of the Facility's generation, whether for inspection, or preventive or corrective maintenance or repair, at any time during any December, January or On-Peak Month without the prior written approval of PNM, which approval may be withheld or granted in PNM's sole discretion recognizing the requirement that outages and deratings shall not be scheduled during On-Peak Months.

(c) PNM may request, by phone, that Seller defer or reschedule any Scheduled Outage/Derating during the Delivery Term. Such request by PNM may be made up to forty-eight (48) hours prior to the commencement of the applicable Schedule Outage/Derating; *provided, however*, such Scheduled Outage/Derating may be deferred during the forty-eight (48) hour notice period at the request of PNM if Seller is able to make commercially reasonable alternate arrangements. Seller agrees to use all commercially reasonably efforts to comply with such request to defer or reschedule such outage or derating.

9.2 Facility Operation. During the Delivery Term, Seller shall staff, control, and operate the Facility consistent at all times with the Operating Procedures and this Agreement. Personnel of Seller capable of starting, running, and stopping the Facility shall be continuously available during the Delivery Term, either at the Facility or capable of being at the Facility on thirty (30) minutes' notice, and shall be continuously reachable by phone or pager. Without limiting the foregoing, during the Delivery Term, Seller will provide qualified personnel to be available twenty-four (24) hours per day, seven days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Facility. PNM will use commercially reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups, and upon such notification and during such identified critical periods, personnel of Seller capable of starting, running, and stopping the Facility shall be continuously available at the Facility. During the Delivery Term, Seller shall operate and maintain the Facility in accordance with Good Utility Practices, applicable Laws, and Required Permits.

9.3 Outage Reporting. During the Delivery Term, Seller shall comply with all current PNM, NERC and WECC generating unit outage reporting requirements, as they may be revised from time to time, and as they apply to the Facility, including the following:

(a) When Forced Outages occur, Seller shall notify PNM's WPM of the existence, nature, and expected duration of the Forced Outage as soon as reasonably practical after the Forced Outage occurs. Seller shall promptly inform PNM's WPM of changes in the expected duration of the Forced Outage unless relieved of this obligation by PNM's WPM for the duration of each Forced Outage.

(b) Seller shall report to PNM all Scheduled Outages/Deratings and Forced Outages that occurred during a Month within five (5) Business Days after the end of the Month. The data reported shall meet all requirements specified in the GADS Manual. Data presentation shall be in accordance with the format prescribed in the GADS Manual, or any successor document. For each turbine generator, the data shall include, but not be limited to the following data, as defined in the GADS Manual: planned derated hours, unplanned derated hours, average derated kW during the derated hours, Scheduled Outages/Deratings hours, Hours On-Control and Hours On-Line.

9.4 Operating Committee and Operating Procedures.

(a) The Parties will establish a group (the "***Operating Committee***") comprised of four (4) members (the "***Operating Committee Representatives***"), two (2) of which shall be representatives designated by PNM and two (2) of which shall be representatives designated by Seller as set forth herein. The Operating Committee shall develop detailed operating procedures for generation, delivery and receipt of capacity, energy, ancillary services and other products

hereunder, nomination and delivery of Gas to be delivered hereunder, and the implementation of this Agreement, shall facilitate, coordinate, and monitor performance hereunder, shall identify areas of synergies between the Parties and determine appropriate strategy to realize such synergies, and shall have such other functions as specified herein. Each Operating Committee Representative shall be fully authorized to act on behalf of the Party who designated such representative with respect to all matters that are the responsibility of the Operating Committee. The Operating Committee shall have no authority to modify the terms or conditions of this PPA.

(b) The Operating Committee Representatives of each Party and an alternate for each Operating Committee Representative who, in the absence of such Operating Committee Representative, may act in the place and stead of such Operating Committee Representative, shall be the operating committee representatives (and applicable alternates) of such Party specified under the Original PPA from time to time thereunder; provided that during the Delivery Term, each Party may change one or more persons designated by such Party as its Operating Committee Representative, or his or her alternate, by providing written notice thereof to the other Party, which notice shall set forth the identity of and contact information for the new Operating Committee Representative, or alternate, as the case may be, and the effective date of such designation, which shall not be less than seven (7) days after receipt of such notice by the other Party.

(c) The Operating Committee shall approve operating procedures that shall serve as a guide on how to integrate the Facility and its electrical output into PNM's system and shall be consistent with the provisions of this PPA. The operating procedures shall include, but not be limited to, method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable PNM and Seller operating centers; clearances and switching practices; operating and maintenance scheduling and reporting; daily capacity and energy reports; unit operations log; and such other matters as may be mutually agreed upon by the Parties. The operating procedures as approved by the Operating Committee are referred to herein as the "***Operating Procedures***."

(d) The Operating Committee shall meet at such times and places as agreed to by the Parties or the Operating Committee. At least one (1) Operating Committee Representative of PNM and one (1) Operating Committee Representative of Seller must be present at each meeting. In the event the Operating Committee Representatives present at a meeting are unable to reach agreement on a particular matter, the matter will be referred to the senior management of each Party. If the senior management of the Parties are unable to reach agreement on such matter within thirty (30) days, the dispute will be resolved in accordance with Section 12.9.

9.5 Access to Facility. Representatives of PNM shall at all times, including weekends and nights, with reasonable prior notice, have access to the Facility, including the control room and Seller's Interconnection Facilities, to read and maintain meters and to perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this PPA or as otherwise reasonably required by PNM. While at the Facility, such representatives shall observe such safety precautions as may be reasonably required by Seller and shall conduct themselves in a manner that will not unreasonably interfere with the operation of the Facility.

9.6 Reliability Standards. During the Delivery Term, Seller shall operate the Facility in a manner that complies with all applicable national and regional reliability standards, including standards set by WECC, NERC, the FERC, and the PRC, or any successor agencies setting reliability standards for the operation of generation facilities in the Control Area.

ARTICLE X
SECURITY FOR PERFORMANCE

10.1 Security for Performance.

(a) Seller shall establish and maintain the Security to provide PNM security that Seller will operate the Facility as required by this PPA and otherwise perform its obligations hereunder. Without limiting the foregoing, the Security shall provide security to PNM to cover Damages if the Facility does not operate in accordance with this PPA, or Seller fails to perform its obligations hereunder or otherwise breaches this PPA. The Security shall also be available to pay any amount due and owing to PNM as described below. Seller agrees to provide the Security to PNM no later than the Delivery Term Start Date and to maintain Security satisfying the requirements of this Article X in the amount of $12,000,000 throughout the remainder of the Delivery Term. Seller shall not be required to maintain Security following the Term unless (i) this Agreement has been terminated as a result of a Seller Event of Default, in which case, Seller shall maintain Security following the Term at the required level until any and all disputes between the Parties have been resolved and Seller has paid all amounts owed by Seller, or (ii) there is a dispute regarding amounts allegedly owed and not paid by Seller that has not been resolved upon expiration of the Term, in which case, Seller shall maintain Security following the Term in an amount equal to the lesser of (A) one hundred fifty percent (150%) of the dispute or (B) $12,000,000 until resolution of such dispute and payment of amounts, if any, owed by Seller. Seller shall establish and maintain the Security at a fixed level of $12,000,000 (except to the extent Seller is permitted to reduce the amount of Security following the expiration of the Term pursuant to clause (ii) of the preceding sentence). Seller shall replenish the Security to such fixed level within five (5) Business Days after any draw on, offset against or demand under the Security by PNM. Seller hereby grants to PNM a first priority continuing security interest in and lien on, right of setoff against, and assignment of, all Security provided from time to time by Seller pursuant to this Agreement.

(b) In addition to any other remedy available to it, PNM may, at such times before or after termination of this PPA, draw from, offset against or make demand under the Security appropriate amounts in order to recover such sums or amounts owing to it pursuant to or arising out of this PPA including, without limitation, any Damages due to PNM and any amounts for which PNM is entitled to indemnification under this PPA. PNM 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 PNM and from all such forms, and in any sequence, as PNM may select. Notwithstanding the foregoing, prior to drawing on the Security, PNM shall provide a written notice or invoice to Seller specifying the amount owed and basis therefor and shall allow Seller two (2) Business Days from the delivery of such notice or invoice to pay such amount prior to drawing on the Security, unless (i) a Seller Event of Default pursuant to Section 11.1(g) has occurred, (ii) such notice or request is prohibited by, or would violate, any bankruptcy, insolvency or similar law or any court order, or (iii) PNM is entitled to draw on the Security pursuant to Section 10.1(e), then in each such case, no written notice or invoice or additional time for Seller to pay shall be required. Any failure to

draw upon the Security for any Damages or other amounts due to PNM shall not prejudice PNM's rights to recover such Damages or amounts in any other manner.

(c) The Security shall be maintained at Seller's expense and shall be provided and maintained in the form of one or more of the following (each of which is agreed to be acceptable to PNM) as may be determined by Seller from time to time in its sole discretion:

(i) An irrevocable standby letter of credit, in form and substance reasonably acceptable to PNM, from a financial institution reasonably acceptable to PNM with an unsecured bond rating of "A3" or better by Moody's Investors Service, Inc. and "A-" or better by Standard and Poor's Corporation; *provided* that if the applicable financial institution is rated "A3" or "A-" by Moody's Investors Service, Inc. or Standard and Poor's Corporation, respectively, such financial institutional may not be on a negative credit watch by the applicable rating agency. Security provided in this form shall include a provision for at least thirty (30) days' advance notice to PNM of any expiration of the Security so as to allow PNM sufficient time to exercise its rights under said Security if Seller fails to extend or replace the Security, and shall otherwise comply with the requirements of this Article X;

(ii) A guarantee, in all material terms the same as set forth on Exhibit J or otherwise in such form and substance as may be reasonably acceptable to PNM, from an entity that is an Affiliate of Seller that has an unsecured senior long-term debt rating of "BBB-" or better by Standard and Poor's Corporation and "Baa3" or better by Moody's Investors Service, Inc. (or, if both are not available, comparably determined ratings from one or more alternate rating sources acceptable to PNM);

(iii) A performance bond, in all material terms the same set forth on Exhibit K or otherwise in such form and substance as may be reasonably acceptable to PNM, from a surety reasonably acceptable to PNM with an unsecured bond rating of "A3" or better by Moody's Investors Service, Inc. and "A-" or better by Standard and Poor's Corporation; provided that if the applicable surety is rated "A3" or "A-" by Moody's Investors Service, Inc. or Standard and Poor's Corporation, respectively, such surety may not be on a negative credit watch by the applicable rating agency.

(iv) Legal currency of the United States of America, deposited with the Escrow Agent pursuant to Section 10.1(f), *provided* that prior to receipt of such funds, PNM shall have established an escrow account with the Escrow Agent on terms and conditions acceptable to PNM.

(d) PNM may reevaluate from time to time the value of all non-cash security posted by Seller for downgrade or for other negative circumstances. If the unsecured senior long-term debt rating of the entity providing a guarantee as Security on behalf of Seller falls below "BBB-" as determined by Standard & Poor's Corporation or "Baa3" as determined by Moody's Investors Service, Inc. (or the equivalent thereof if an alternate rating source has been used), Seller shall be required to replace the Security provided in the form of a guarantee with an irrevocable standby letter of credit satisfying the requirements of Section 10.1(c)(i), within fifteen (15) days after Seller's receipt of demand therefor from PNM. If the unsecured bond rating of the financial institution that has issued a letter of credit provided as Security falls below "A3" as determined by Moody's Investors Service, Inc. or "A-" as determined by Standard and Poor's Corporation (or remains at such "A3" or "A-" rating but is placed on a negative credit watch by the applicable rating agency), Seller shall be required to replace the letter of credit issued by such financial institution with an irrevocable standby letter of credit satisfying the requirements of Section 10.1(c)(i), within five (5) Business Days after Seller's receipt of demand therefor from PNM. If the unsecured bond rating of the surety that has issued a performance bond provided as Security falls below "A3" as determined by Moody's Investors Service, Inc. or "A-" as determined by Standard and Poor's Corporation (or remains at such "A3" or "A-" rating but is placed on a negative credit watch by the applicable rating agency), Seller shall be required to replace the performance bond issued by such financial institution with either an irrevocable standby letter of credit satisfying the requirements of Section 10.1(c)(i), a guarantee satisfying the requirements of Section 10.1(c)(ii) or a performance bond satisfying the requirements of Section 10.1(c)(iii), within five (5) Business Days after Seller's receipt of demand therefor from PNM.

(e) If an irrevocable standby letter of credit is utilized by Seller as the Security, the form of such letter of credit must allow claims or draw-downs to be made by PNM in accordance with the terms of this PPA. Such Security must be issued for a minimum term of one (1) year. Seller shall effect the renewal or extension of the Security for another minimum term of one (1) year, or for the remainder of the period for which Security is required to be maintained pursuant to the terms of this PPA, whichever period is shorter, no later than thirty (30) days prior to the expiration date of the Security. If Seller fails to effect the renewal of such Security as required under this Section 10.1(e), PNM shall have the right to draw immediately upon the Security in full and to place the amounts so drawn in an account in accordance with Section 10.1(f) until and unless Seller provides a substitute form of such Security meeting the requirements of this Article. Any and all amounts drawn by PNM shall constitute Security provided PNM in the form of cash.

(f) If Seller elects to post cash as the Security pursuant to Section 10.1(c)(iv), PNM shall establish at Seller's cost with Seller's funds an interest bearing escrow account in the name of PNM, with a financial institution or company ("***Escrow Agent***") reasonably acceptable to PNM, on terms and conditions acceptable to PNM, which terms and conditions must allow claims, offsets and draw-downs to be made by PNM in accordance with the terms of this PPA and must permit interest earned on the Security to be remitted to Seller in accordance with the following sentence. At such times as the balance in the escrow account exceeds the amount of the Security that Seller is required to maintain hereunder, PNM may, and promptly upon receipt of written request by Seller, PNM shall remit to Seller any such excess in the escrow account above the amount of Security that Seller is required to maintain hereunder; *provided* that PNM shall not be required to remit to Seller such excess amounts more often than once per calendar month. Seller may obtain the return of such escrow account at any time by providing to PNM a substitute form of Security

in the amount required under this Article and meeting the requirements specified in this Article. Funds held in the account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three Months or less, with all investment income thereon to be taxable to Seller, and to accrue for the benefit of Seller to the extent that the funds held in the account exceed the amount of Security required to be maintained by Seller hereunder. Any and all amounts drawn by PNM pursuant to Section 10.1(e) shall be deposited by PNM in a segregated account established by PNM pending the establishment of an escrow account with the Escrow Agent.

(g) Promptly following the end of the period during which Seller is required to maintain Security hereunder, PNM shall release any remaining Security (including any accumulated interest, if applicable) to Seller.

10.2 Security under Original PPA. From and after the Delivery Term Start Date, (i) Seller may apply any security provided by Seller under the Original PPA towards satisfaction of its obligations to provide Security under this PPA, (ii) Seller shall not be required to maintain more security in aggregate under this PPA and the Original PPA than what is required under this PPA and (iii) the portion of the Security provided under this PPA securing obligations under or with respect to the Original PPA at any time shall not exceed the amount of the security than what was then required to be maintained with respect to the Original PPA pursuant to the terms of the Original PPA.

ARTICLE XI
DEFAULT AND REMEDIES

11.1 Events of Default of Seller. The occurrence of any one or more of the following shall constitute an event of default by Seller hereunder (each, a "***Seller Event of Default***"):

(a) Seller's dissolution or liquidation;

(b) Seller's abandonment of operation of the Facility for more than ninety (90) consecutive days;

(c) Seller (i) commences any Insolvency Proceeding with respect to itself or (ii) makes a general assignment for the benefit of its creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due or takes any action to effectuate or authorize any of the foregoing action;

(d) (i) any involuntary Insolvency Proceeding is commenced or filed against Seller and such proceeding is not dismissed within ninety (90) days, or any writ, judgment, warrant of attachment, execution or similar process is issued or levied against all or a substantial part of Seller's properties and such process is not dismissed, discharged, stayed or restrained within sixty (60) days, (ii) Seller admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief is ordered in any Insolvency Proceeding, or (iii) Seller acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent thereof), or other similar Person for itself or a substantial portion of its property or business;

(e) the expiration or termination of any Security provided, or the failing or ceasing of any Security provided to be in full force and effect, prior to the satisfaction of all obligations of Seller hereunder, or other breach by Seller of its obligations under Article X, which breach continues unremedied for a period of five (5) Business Days after receipt by Seller of written notice from PNM identifying such breach;

(f) any breach of any of the material obligations by the issuer of a letter of credit or guarantor under any guaranty provided as Security, which failure continues without remedy for a period of ten (10) days after receipt by the issuer of a letter of credit or guarantor of written notice from PNM identifying such breach;

(g) Seller's failure to make any payment required under this PPA when due, which failure continues unremedied for a period of ten (10) days after receipt by Seller of written notice from PNM identifying such failure;

(h) Seller's assignment of this PPA, or any rights or obligations hereunder, or transfer or sale of the Facility, in violation of the provisions in Article XVIII, which violation continues unremedied for a period of ten (10) days after receipt by Seller of written notice from PNM identifying such violation;

(i) any breach by Seller of any of its material obligations hereunder (except provided for herein), which breach continues unremedied for a period of thirty (30) days after receipt by Seller of written notice from PNM identifying such breach;

(j) any representation or warranty made by Seller in this PPA shall have been false or misleading in any material respect when made or ceases to remain true and correct in all material respects during the Term, which failure continues unremedied for a period of thirty (30) days after receipt by Seller of written notice from PNM identifying such failure; and

(k) prior to the Delivery Term Start Date, the occurrence of a "Seller Event of Default" under the Original PPA;

provided that, in the event that a breach, default or other event occurs for which PNM may provide a notice pursuant to any of the foregoing clauses of this Section 11.1, and the provision of such notice is prohibited by, or would violate, any bankruptcy, insolvency or similar law or any court order, then (i) no such notice shall be required, and (ii) such notice shall be deemed to have been given, and any applicable cure period shall be deemed to have commenced, as of the date on which such breach, default or other event occurred.

11.2 Lender Right to Cure Default of Seller. Seller shall provide PNM with a notice identifying the Senior Lender with appropriate contact information. Following receipt of such notice, PNM shall provide notice pursuant to Section 12.1 of any Seller Event of Default to the Senior Lender, and the Senior Lender shall have the right to cure any breach or default of Seller hereunder to the same extent as Seller, and PNM will accept any such cure performed by Senior Lender. Upon the reasonable request of Seller or the Senior Lender, PNM shall provide a consent in form and substance as agreed to by the Parties acknowledging such cure rights of the Senior Lender.

11.3 Events of Default of PNM. The occurrence of any one or more of the following shall constitute an event of default by PNM hereunder (each, a "***PNM Event of Default***"):

(a) PNM's dissolution or liquidation, except pursuant to a merger, consolidation or reorganization where the successor succeeds to all or substantially all of the assets of PNM and expressly assumes PNM's obligations hereunder;

(b) PNM (i) commences any Insolvency Proceeding with respect to itself or (ii) makes a general assignment for the benefit of its creditors (other than collateral assignment), or generally fails to pay, or admits in writing its inability to pay, its debts as they become due or takes any action to effectuate or authorize any of the foregoing action;

(c) (i) any involuntary Insolvency Proceeding is commenced or filed against PNM and such proceeding is not dismissed within 90 days, or any writ, judgment, warrant of attachment, execution or similar process is issued or levied against all or a substantial part of PNM's properties and such process is not dismissed, discharged, stayed or restrained within 60 days, (ii) PNM admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief is ordered in any Insolvency Proceeding, or (iii) PNM mortgagee in possession (or agent thereof), or other similar Person for itself or a substantial portion of its property or business;

(d) PNM's failure to make any payment required under this PPA when due, which failure continues unremedied for a period of ten (10) days after receipt by PNM of written notice from Seller identifying such failure;

(e) any breach by PNM of any of its material obligations hereunder (except obligations identified in the preceding clauses and obligations for which exclusive remedies are provided for herein), which breach continues unremedied for a period of thirty (30) days after receipt by PNM of written notice from Seller identifying such breach;

(f) any representation or warranty made by PNM in this PPA shall have been false or misleading in any material respect when made or ceases to remain true and correct in all material respects during the Term, which failure continues unremedied for a period of 30 days after receipt by PNM of written notice from Seller identifying such failure; and

(g) prior to the Delivery Term Start Date, the occurrence of a "PNM Event of Default" under the Original PPA;

provided that, in the event that a breach, default or other event occurs for which Seller may provide a notice pursuant to any of the foregoing clauses of this Section 11.3, and the provision of such notice is prohibited by, or would violate, any bankruptcy, insolvency or similar law or any court order, then (i) no such notice shall be required, and (ii) such notice shall be deemed to have been given, and any applicable cure period shall be deemed to have commenced, as of the date on which such breach, default or other event occurred.

11.4 Damages Prior to Termination. Upon the occurrence and during the continuation of an Event of Default, without limiting any other rights or remedies available to it (including rights and remedies prior to or otherwise relating to such Event of Default), the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all damages incurred by the Non-Defaulting

Party in connection with such Event of Default (except to the extent expressly waived herein), *provided* that if an Event of Default has occurred and has continued uncured for a period of one (1) year, 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 the following Section 11.5.

11.5 Termination For Default. Upon the occurrence and during the continuation of an Event of Default, without limiting any other rights or remedies available to it, the Non-Defaulting Party may terminate this Agreement by giving the other Party written notice thereof, which termination shall be effective on the date specified in such notice ("***Early Termination Date***"); *provided* that such Early Termination Date shall be between ten (10) and twenty (20) Business Days after the termination notice is given by the Non-Defaulting Party. In the event of a termination pursuant to this Section 11.5, the Non-Defaulting Party shall be entitled to all rights and remedies available to such Party at law or in equity.

11.6 Remedies Cumulative. Subject to the limitations on damages and remedies expressly set forth in this PPA, 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 in this PPA shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this PPA.

11.7 Limitations on Damages.

(a) Limitation on Damages. The total liability of either Party to the other Party for damages under this PPA shall not exceed, in the aggregate, the fixed sum of $60,000,000 (the "***Damages Cap***"); *provided* that, the foregoing limitation on damages shall not apply to limit damages, and shall not impair, affect, diminish or limit in any manner whatsoever liability for, any and all of the following, all of which shall not be subject to the Damages Cap and shall not be included in the amount of liability of the applicable Party for purposes of determining the liability of such Party that is subject to the Damages Cap:

(i) Seller's failure to apply any insurance proceeds to reconstruction of the Facility following a casualty;

(ii) liability of a Party under Article XVI;

(iii) the filing of an involuntary bankruptcy petition against a Party (other than by the other Party), which petition is not dismissed within 60 days of its filing, or the filing of a voluntary petition in bankruptcy by such Party;

(iv) any amount owed to the Non-Defaulting Party if this Agreement is terminated pursuant to Section 11.5 in respect of forward market damages; and

(v) the intentional breach of the terms of this Agreement by a Party for economic reasons.

(b) The Parties acknowledge that the liability of a Party, for damages or otherwise, arising out of fraud or intentional misconduct by the other Party will be governed by applicable Law and is not subject to contractual limitations contained in this PPA.

(c) WAIVER AND EXCLUSION OF CERTAIN DAMAGES. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS PPA SATISFY THE ESSENTIAL PURPOSES HEREOF. 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, IN CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN) OR OTHERWISE, AND EACH PARTY HEREBY WAIVES, RELEASES AND DISCHARGES ANY AND ALL CLAIMS FOR SUCH DAMAGES; *PROVIDED* THAT IF EITHER PARTY IS HELD LIABLE TO A THIRD PARTY FOR SUCH DAMAGES AND THE PARTY HELD LIABLE FOR SUCH DAMAGES IS ENTITLED TO INDEMNIFICATION THEREFOR FROM THE OTHER PARTY HERETO, THE INDEMNIFYING PARTY SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY FOR, SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OF LOSS.

(d) 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.

ARTICLE XII
CONTRACT ADMINISTRATION AND NOTICES

12.1 Notices. All notices, requests, consents, statements, payments or other communications required or authorized to be made under this PPA must be in writing to be effective, unless otherwise expressly set forth herein, and shall be made as specified in Exhibit I hereto. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form and shall be deemed to be delivered and received (a) if personally delivered or if delivered by courier service (including, overnight courier service), when actually received by the Party to whom notice is sent, (b) if delivered by telex or facsimile, on the day transmitted if such day is a Business Day and delivery thereof is confirmed to have occurred prior to 5:00 p.m. in the time zone of the receiving Party, otherwise it shall be deemed delivered and received on the next Business Day, or (c) if delivered by mail (whether actually received or not), at the close of business on the fifth (5^{th}) Business Day following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate Party, at the address and/or facsimile numbers of such Party as provided herein. A Party may change its address by providing notice of same in accordance herewith.

12.2 Representative for Notices. Each Party shall maintain a designated representative (the "***Seller Representative***" and the "***PNM Representative***," respectively) to receive notices. The initial representative appointed by each Party are set forth on Exhibit I. Such representative may, at the option of each Party, be the same individual as that Party's representative or alternate representative on the Operating Committee or a different individual. 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.

12.3 Authority of Representatives. The Seller Representative and the PNM Representative shall have authority to act for their respective principals in all matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes; *provided* that they shall not have the authority to act for their respective principals with respect to matters addressed by Article X (Security for Performance), Article XI (Default and Remedies), Article XV (Insurance), Article XVI (Indemnity), and Article XVIII (Assignment and Other Transfer Restrictions) of this PPA or to amend, modify or waive any provision of this PPA.

12.4 Operating Records. Seller and PNM shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by state or federal regulatory authorities and WECC in the prescribed format.

12.5 Operating Log. Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility, which shall include, without limitation, records of power production for each clock hour; changes in operating status; planned and unplanned outages, deratings and curtailments; number of unit start-ups, trips, quantity of gas consumed and air pollutants emitted by the Facility; any unusual conditions found during inspections; and any other information required under Good Utility Practices or any Project Agreement. Seller must maintain accurate and up-to-date logs of dispatched and scheduled energy, and other records needed in order to comply with this PPA and enable PNM to realize the Facility Benefits, including but not limited to clear separation of the hours the Facility is operated for the generation of Scheduled Energy and the hours the Facility unit is operated for other purposes as directed by PNM. By the fifth (5th) day of each Month, Seller shall submit to PNM, in electronic format, a copy of the operating log for the previous Month. When PNM reasonably requires such information more frequently than once a Month, Seller shall provide such data as reasonably requested by PNM.

12.6 Billing and Payment Records. To facilitate payment and verification, Seller and PNM shall keep all books and records necessary for billing and payments in accordance with the provisions of Article VIII and elsewhere in this Agreement, and grant the other Party access to those records as provided in Article VIII and elsewhere in this Agreement. All records of Seller pertaining to the operation of the Facility shall be maintained on the premises of the Facility.

12.7 Examination of Records. PNM may examine the Operating Records of Seller relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, upon request and during normal business hours.

12.8 Exhibits. All Exhibits may be changed at any time with the mutual written consent of both Parties after the Effective Date. Exhibit H may be changed in accordance with

Section 15.2(b). 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 as set forth in Exhibit I.

12.9 Dispute Resolution.

(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 as set forth in Section 12.2 (individually, the "***Party Representative***," together, the "***Parties' 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 (the "***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 arbitration as provided herein. 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, by notice to the other, submit the matter for resolution as provided in Section 12.9(b).

(b) Arbitration. If the Parties are unable to resolve the dispute within ten (10) days after receipt of the Dispute Notice by the senior officers or officials, either Party may give the other Party written notice that such negotiations are terminated and request that the dispute be settled through arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("***AAA***"). Within ten (10) days after such notice, the selection of a three-member panel of arbitrators shall be initiated as follows. Each Party shall select one arbitrator who has knowledge in the subject matter at issue, the qualifications of whom shall be entirely at the selecting Party's discretion, and shall notify the other Party in writing of such selection. Within ten (10) days after such written notification of the selection of arbitrators, the two selected arbitrators shall choose a third arbitrator (the "***Neutral Arbitrator***"). If the two selected arbitrators cannot agree on a Neutral Arbitrator, they shall select the Neutral Arbitrator from a list of arbitrators experienced and knowledgeable in the subject matter at issue, to be submitted by the AAA. If the two selected arbitrators still cannot agree on a Neutral Arbitrator, the arbitrator shall be selected pursuant to Rule 13 of the AAA rules. Either Party may request the AAA to disqualify the Neutral Arbitrator on grounds of bias, personal or financial interest, or relationship with any Party, pursuant to the rules of the AAA. The panel of arbitrators shall convene a hearing within forty-five (45) days after the selection of the Neutral Arbitrator and shall render a decision, by a majority of the of the panel, within fifteen (15) days after such hearing The arbitration shall be conducted according to the following: (i) not later than seven (7) days prior to the hearing date set by the arbitrators each Party shall submit a brief with a single proposal for settlement, (ii) the hearing shall be conducted in

Albuquerque, New Mexico; (iii) the hearing shall be conducted on a confidential basis without continuance or adjournment; (iv) a written transcript of all proceedings and testimony shall be kept; (v) each Party shall divide equally the cost of the arbitrator and the hearing and each Party shall be responsible for its own expenses and those of its counsel and representatives, and (vi) evidence concerning the financial position or organizational make-up of the Parties, any offer made or the details of any negotiation prior to arbitration and the cost to the Parties of their representatives and counsel shall not be permissible. The decision shall be final and binding on the Parties and their successors and may be entered as a judgment in any court of competent jurisdiction. The decision shall be in writing, shall state the reasoning on which the award rests, and shall specify how the expenses of the arbitration shall be divided between the Parties. The panel of arbitrators may not direct specific performance, nor may they, under any circumstances, award consequential, incidental or punitive damages, treble damages, or other damages in excess of actual damages. The arbitrators shall not have the power to amend or add to this PPA. The Parties agree that they have waived the right to recover damages in excess of actual damages or other relief and agree that they will not seek damages in any other forum.

(c) Acknowledgment of Arbitration. EACH PARTY UNDERSTANDS THAT THIS PPA CONTAINS AN AGREEMENT TO ARBITRATE WITH RESPECT TO ANY DISPUTE OR NEED OF INTERPRETATION PERTAINING TO ANY AND ALL DISPUTES ARISING UNDER THIS PPA, AND EXCEPT AS PROVIDED BELOW, AFTER SIGNING THIS PPA, EACH PARTY UNDERSTANDS THAT IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE HEREUNDER, AND INSTEAD, EACH PARTY AGREES TO SUBMIT ANY SUCH DISPUTE TO ARBITRATION IN ACCORDANCE WITH THIS PPA.

(d) The Parties hereby agree and acknowledge that it is not possible to measure the exact amount of damages that would be sustained by a Party by reason of a default of the other Party hereunder. Accordingly, the Parties agree that the each Party shall be entitled to seek and obtain specific performance from the other Party from a court having jurisdiction.

(e) Nothing in this Section 12.9 shall limit the right of either Party to (i) foreclose against any real or personal property collateral or other security by the exercise of a power of sale under a deed of trust, mortgage, or other security agreement or instrument, or applicable Law, or otherwise realize upon Security provided, (ii) exercise self-help remedies (including setoff rights), or (iii) obtain provisional or ancillary remedies such as injunctive relief, specific performance, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuant to provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any Party to submit a dispute to arbitration.

12.10 Records Relating to Performance under this Agreement. Each Party and its Affiliates shall maintain records and supporting documentation relating to this Agreement, the Facility. and the performance of the Parties hereunder in accordance with. and for the applicable time periods required by, all applicable Laws, but in no event less than two (2) years after final payment is made under this Agreement.

12.11 Sarbanes-Oxley and Securities and Exchange Commission Requirements. The Parties shall determine, through consultation with their respective independent registered public accounting firms, if necessary, whether PNM or any of its Affiliates is required to consolidate Seller's financial statements with PNM's or such Affiliate's financial statements for financial accounting purposes under Financial Accounting Standard Boards Interpretation No. 46(R), "Consolidation of Variable Interest Entities" or future guidance issued by accounting profession governance bodies or the SEC that affects PNM's accounting treatment for the Agreement. If, as a result of this review (or subsequent reviews as required), the Parties determine that such consolidation is required for a given period, or in the event the Parties acting in good faith cannot agree on whether consolidation is required, then the Parties agree to the following provisions for such period:

(a) Within thirty (30) days following the end of each calendar year, Seller shall deliver to PNM (i) unaudited financial statements together with related footnotes as necessary to comply with GAAP, and (ii) a completed annual disclosure checklist with supporting financial schedules necessary for PNM to prepare its annual filing with the SEC. PNM will provide to Seller such checklist prior to the end of each year and include only items considered material to PNM. If audited financial statements are prepared for the calendar year, Seller shall provide such statements to PNM within five (5) Business Days after those statements are issued.

(b) Within fifteen (15) days following the end of each calendar quarter, Seller shall deliver to PNM: (i) an unaudited condensed statement of income for the calendar quarter and year-to-date, (ii) an unaudited condensed statement of cash flows for the calendar quarter and year-to-date, (iii) an unaudited condensed balance sheet at the end of such calendar quarter, and (iv) a completed quarterly disclosure checklist with supporting financial schedules necessary for PNM to prepare its quarterly filing with the SEC. PNM will provide to Seller such checklist prior to the end of each quarter and include only items considered material to PNM.

(c) Seller's Financial Statements.

(i) The financial statements to be delivered by Seller in accordance with Section 12.11(a) and (b) ("***Seller's Financial Statements***") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position of Seller at the dates thereof.

(ii) Seller's Financial Statements shall be prepared in all material respects in accordance with the Books and Records of Seller. The Books and Records of Seller: (A) shall reflect in all material respects all items of income and expense and all of the assets and liabilities required to be reflected therein in accordance with GAAP; (B) shall be complete and correct in all material respects; and (C) shall be maintained in accordance with good business and accounting practices and applicable Law.

(iii) Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that with respect to the business conducted by Seller: (A) the Books and Records of Seller are maintained in reasonable detail and fairly reflect the transactions and dispositions of the assets of Seller; (B) access to assets is permitted and transactions are executed only in accordance with management's general or specific

authorization; (C) transactions are recorded as necessary to permit the preparation of financial statements of Seller in conformity with GAAP and to maintain asset accountability; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(d) Upon reasonable notice from PNM, during normal business hours and mutually agreed terms and dates, Seller shall allow PNM access to Seller's records and personnel, so that PNM and PNM's independent registered public accounting firm, at PNM's expense, can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. Within thirty (30) days of Seller's receipt of notice from PNM, Seller shall remediate any deficiency in Seller's internal controls of financial reporting identified by PNM or PNM's independent registered public accounting firm during or as a result of the audits permitted in this Section 12.11(d). All expenses for the foregoing shall be borne by PNM.

(e) If there is a change, or Seller has determined to implement a change, that has materially affected, or is reasonably likely to materially affect, Seller's internal control over financial reporting, Seller shall notify PNM within a commercially reasonable period of time of such change or the determination to make a change so that PNM and PNM's independent registered public accounting firm will have sufficient time to conduct an assessment of the change before the end of the then current quarter and, upon reasonable notice, Seller shall be available to discuss such change with PNM and PNM's independent registered public accounting firm.

(f) Once during each calendar quarter, PNM and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and discuss Seller's internal control over financial reporting.

(g) As soon as possible, but in no event later than two (2) Business Days following the occurrence of any items affecting Seller which, during the Term, Seller understands that PNM would be required to disclose in a Form 8-K filing with the SEC, Seller shall provide to PNM a notice describing such event in sufficient detail to permit PNM to make a Form 8-K filing. Such items include, but are not limited to, the following:

(i) Acquisition or disposition of a material amount of assets;

(ii) Creation of a material direct financial obligation or off-balance sheet financing arrangement;

(iii) Existence of material litigation; and

(iv) Entry into, or termination of, a material contract not made in the ordinary course of Seller's business.

(h) PNM shall treat Seller's Financial Statements or other financial information provided under the terms of this Section 12.11 in confidence in accordance with Section 19.14 and, accordingly shall:

(i) Utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying PNM'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 Law in which PNM is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings, and

(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 PNM'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 PNM's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 19.14.

12.12 Other Regulatory and Governmental Requirements. At PNM's request and to the extent necessary for PNM to comply with applicable Laws, Seller shall maintain and deliver to PNM copies of records and supporting documentation with respect to the Facility that Seller is not already required to maintain or deliver under this Agreement, in order to comply with all applicable Laws. Any Confidential Information provided to or obtained by PNM under this Section 12.12 shall be subject to the provisions of Section 19.14.

12.13 Audit Rights. PNM shall have the right, at its sole expense and during normal working hours, to examine (or hire an independent third party reasonably acceptable to Seller to examine) the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall have the right, at its sole expense, to hire an independent third party reasonably acceptable to PNM to examine the documents, records or data of PNM during normal working hours to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement Any independent third party hired to examine the documents, records or data of a Party must sign a confidentiality agreement in substance reasonably acceptable to such Party before examining such Party's documents, records or data. Each Party shall promptly comply with any reasonable request by the other Party under this Section 12.13 and provide copies of documents, records or data to the requesting Party. The rights and obligations under this Section 12.13 shall survive the termination of this Agreement for a period of one (1) year.

ARTICLE XIII
FORCE MAJEURE AND OTHER DELAYS

13.1 Definition of Force Majeure. The term "Force Majeure," as used in this PPA, means causes or events that arise after the Effective Date, are beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, are unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure, and adversely and materially affect the Party claiming Force Majeure in the performance of its obligations in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, events that may give rise to Force Majeure include, without limitation, acts of God, sudden actions of the elements such as floods, lightning, earthquakes, hurricanes, or tornadoes; sabotage; vandalism beyond that which could reasonably be prevented; terrorism; war; riots; fire; explosion; severe and abnormal weather conditions; blockades;

insurrection; strike; slow down or labor disruptions (*provided* neither Party shall be required to concede to the demands of a labor group or settle any labor strike on terms not acceptable to such Party); and actions by any Governmental Authority (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state, or local government bodies, but only if the Party claiming Force Majeure has not applied to or assisted in the application for, and has opposed where and to the extent reasonable, such government action); and inability, despite due diligence, to obtain or maintain any Required Permit to be obtained by the Party claiming the Force Majeure. The term Force Majeure does not include (a) any full or partial curtailment in the electric output of the Facility that is caused by or arises from the act or acts of any third party, including, without limitation, any vendor, materialman, customer, or supplier of Seller, unless such act or acts is itself excused by reason of Force Majeure, as such definition is applied to such third party, and such event constitutes a Force Majeure, as such definition is applied to Seller; (b) changes in market conditions, actions of Governmental Authorities, or other events or circumstances that affect demand or price for any of Seller's or PNM's products, the price of natural gas or the transportation thereof to the Facility, the cost of any of PNM's transmission service arrangements to deliver energy beyond the Point of Delivery, or the cost of equipment, labor, materials or supplies; or (c) weather conditions normally experienced in the geographic area.

13.2 Applicability of Force Majeure. Neither Party shall be responsible or liable for any delay or failure in its performance under this PPA due solely to conditions or events of Force Majeure, *provided* that:

(a) the Party claiming the Force Majeure gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

(b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(c) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to remedy the conditions or events which constitute the Force Majeure; and

(d) when the Party claiming the Force Majeure is able to resume performance of its obligations under this PPA, that Party shall immediately give the other Party written notice to that effect.

The performance by the Party not claiming the Force Majeure of its obligations hereunder shall be suspended; *provided* that such suspension of performance is of no greater scope and of no longer duration than is required by the effect of the suspension of performance of the Party claiming the Force Majeure.

13.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this PPA beyond its stated Term or operate to excuse the payment of any amounts otherwise due and payable hereunder. In addition, a Party shall not be excused under this Article from timely performance of its obligations hereunder to the extent that the claimed Force Majeure was caused by any negligent or intentional acts, errors, or omissions, or for any breach or default of this Agreement by such

Party. Furthermore, no suspension of performance or extension of time shall relieve the Party benefiting therefrom from any liability for any breach of the obligations that were suspended to the extent such breach occurred prior to the occurrence of the applicable Force Majeure. Notwithstanding anything contained herein to the contrary, Seller shall not be excused under this Article from timely performance of its obligations hereunder as a result of any failure or inability of Seller to maintain any Seller FERC Permit, or any action or inaction by any Governmental Authority in connection therewith.

13.4 Termination Due to Force Majeure. If a Force Majeure has occurred and continues during the Delivery Term for a period of at least one hundred eighty (180) days, then, notwithstanding that the Parties may by reason thereof have been granted a suspension of performance, either Party may terminate this Agreement by providing written notice thereof to the other Party. In such event, this Agreement shall be terminated as of the date specified in such notice, and neither Party shall have any liability, or owe any damages, on account of such termination, and each Party hereby waives, discharges and releases the other Party from any and all such liability, damages and claims.

ARTICLE XIV
REPRESENTATIONS AND WARRANTIES

14.1 Seller's Representations and Warranties. Seller hereby represents and warrants as follows:

(a) Seller is a limited liability company duly organized, validly existing under the laws of the State of New Mexico and is qualified to do business in New Mexico and 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:

(i) require any consent or approval of Seller's members other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to PNM upon its request);

(ii) violate any provision of Law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller 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;

(iii) 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

(iv) 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 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) This PPA is a valid and binding obligation of Seller, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending.

(d) To Seller's knowledge, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Seller's execution, delivery, and performance under this PPA have been duly obtained and are in full force and effect.

14.2 PNM's Representations and Warranties. PNM hereby represents and warrants as follows:

(a) PNM 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 PNM; and PNM 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 PNM have been duly authorized by all necessary corporate action, and do not and will not:

(i) require any consent or approval of PNM's Board of Directors, or shareholders, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);

(ii) violate any provision of Law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to PNM or violate any provision in any corporate documents of PNM, the violation of which could have a material adverse effect on the ability of PNM to perform its obligations under this PPA;

(iii) result in a breach or constitute a default under PNM's corporate charter or bylaws, or under any agreement relating to the management or affairs of PNM, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which PNM is a party or by which PNM 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 PNM to perform its obligations under this PPA; or

(iv) 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 PNM 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 PNM to perform its obligations under this PPA.

(c) This PPA is a valid and binding obligation of PNM, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending.

(d) To PNM's knowledge, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize PNM's execution, delivery, and performance under this PPA have been duly obtained and are in full force and effect.

14.3 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH OF THE PARTIES EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

ARTICLE XV
INSURANCE

15.1 Evidence of Insurance. Seller shall, on or before June 1 of each year of the Delivery Term, provide PNM with two (2) copies of insurance certificates reasonably acceptable to PNM evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit H and this Article XV. Such certificates shall (a) provide that PNM shall receive thirty (30) days prior written notice of non-renewal, cancellation of, or significant modification to any of the above policies (except that such notice shall be ten (10) days for non-payment of premiums); (b) provide a waiver of any rights of subrogation against PNM and its Affiliates and their respective officers, directors, agents, subcontractors, and employees; and (c) contain such other endorsements and terms as required hereunder. All policies shall be written with insurers that PNM, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by PNM). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

15.2 Term and Modification of Insurance.

(a) All liability insurance required under this PPA shall cover occurrences during the, Delivery Term of this PPA and for a period of two (2) years after the Term. 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 Delivery Term Start 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) years after the Delivery Term.

(b) Upon a showing satisfactory to PNM in its reasonable discretion that Seller or its Affiliate(s) has sufficient net worth to self insure Seller hereunder, either directly or through an Affiliate, Seller may self insure either all or any portion of the foregoing coverages so long as there

is no material decrease in said net worth, or means, that renders the same insufficient for purposes of self insurance. If at any time during the Delivery Term, PNM, in its reasonable discretion, determines that it will no longer accept self insurance from Seller, PNM shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit H within 60 days.

(c) PNM shall have the right, at times deemed appropriate to PNM during the Delivery Term of this PPA, to request Seller to modify the insurance minimum limits specified in Exhibit H in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

15.3 Endorsements and Other Requirements.

(a) Insurers shall waive all rights of subrogation against PNM and its Affiliates and their respective officers, directors, agents, subcontractors and employees.

(b) The insurance required under this PPA shall be primary insurance. Any other insurance carried by PNM shall be excess and not contributory with respect to the insurance required hereunder.

(c) The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit H shall be endorsed to include PNM, its Affiliates and their respective officers, directors, and employees as additional insureds only to the extent PNM (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 H shall state, that with respect to coverage of more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

ARTICLE XVI
INDEMNITY

16.1 Indemnity. Each Party (the "***Indemnifying Party***") agrees to indemnify, defend and hold harmless the other Party (the "***Indemnified Party***") from and against all claims, causes of action, demands, losses, damages, liabilities, obligations, penalties, assessments, costs, and expenses (including reasonable attorneys' fees) for personal injury or death to persons and damage to the Indemnified Party's property or facilities or the property of any other Person to the extent arising out of, resulting from, or caused by default of this PPA by the Indemnifying Party, or by the negligent or tortious acts, errors, or omissions of the Indemnifying Party, its Affiliates, and each of their respective directors, officers, employees, or agents.

16.2 Conditions of Indemnification. The respective rights and obligations of the Parties under this Article XVI with respect to claims resulting from the assertion of liability by third parties shall be subject to the following terms and conditions:

(a) Within fourteen (14) days (or such earlier time as might be required to avoid prejudicing the Indemnifying Party's position) after receipt of notice of commencement of any action evidenced by service of process or other legal pleading, the Indemnified Party shall give the Indemnifying Party written notice thereof, together with a copy of such claim, process or other

legal pleading. Failure of the Indemnified Party to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the failure of the Indemnified Party to give such notice. In any event, the failure to so notify shall not relieve the Indemnifying Party from any liability that it may have to the indemnifying Person otherwise than under this Article XVI.

(b) Each Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder and the reasonable costs and expenses thereof (including reasonable attorneys' fees and expert witness fees) shall be subject to the said indemnity; *provided* that the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Party. The Indemnified Party shall provide reasonable assistance to the Indemnifying Party, at the Indemnifying Party's expense, in connection with such claim, action, suit or proceeding. Upon such assumption, the Indemnifying Party shall reimburse the Indemnified Party for the reasonable costs and expenses previously incurred by it prior to the assumption of such defense by the Indemnifying Party. The Indemnifying Party shall keep the Indemnified Party informed as to the status and progress of such claim, action, suit or proceeding. Except as set forth in paragraph (c) below, in the event the Indemnifying Party assumes the control of the defense, the Indemnifying Party will not be liable to the Indemnified Party under this Article for any legal fees or expenses subsequently incurred by the Indemnified Party in connection with such defense. The Indemnifying Party shall control the settlement of all claims over which it has assumed the defense; *provided, however*, that the Indemnifying Party shall not agree to or conclude any settlement that affects the Indemnified Party without the prior written approval of the Indemnified Party (whose said approval shall not be unreasonably withheld).

(c) In the event the Indemnifying Party assumes control of the defense, the Indemnified Party shall have the right to employ its own counsel and such counsel may participate in such claim, action, suit or proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless: (i) the employment of counsel by such Indemnified Party has been authorized in writing by the Indemnifying Party; (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or (iii) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either that there may be specific defense available to it which are different from or additional to those available to the Indemnifying Party. If any of the preceding clauses (i) through (iii) shall be applicable, then counsel for the Indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and expenses of such counsel shall be reimbursed by the Indemnifying Party.

ARTICLE XVII
REGULATORY JURISDICTION AND COMPLIANCE

17.1 Governmental Jurisdiction and Regulatory Compliance. Each Party shall at all times comply with all applicable Laws applicable to it. Seller shall give all required notices, shall

timely procure and maintain all Seller Required Permits, and shall pay all charges and fees in connection therewith. Seller shall disclose to PNM promptly upon becoming known to Seller, any violation or alleged violation of any environmental Laws or regulations arising out of the operation of the Facility. PNM shall give all required notices, shall timely procure and maintain all PNM Required Permits, and shall pay all charges and fees in connection therewith.

17.2 Provision of Support. Each Party shall make available, upon reasonable request of the other Party, any personnel of Seller and any records relating to the Facility or this PPA to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including, but not limited to, litigation or proceedings before PRC, FERC or other regulatory commissions.

ARTICLE XVIII
ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS

18.1 Assignment.

(a) Neither Party shall assign this PPA or any interest, right or obligation hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided* that such consent shall not be required prior to an assignment by Seller to the Senior Lender, or to a trustee or mortgagee pursuant to the Financing Documents (in which case, however, such trustee or mortgagee shall agree that any further assignments by such trustee or mortgagee shall require the prior written consent of PNM, which consent shall not be unreasonably withheld or delayed by PNM); but, *provided further*, that in any event: (i) notice of any proposed assignment shall be given to the other Party at least three days prior to the date of the assignment; (ii) any assignee (except for collateral assignment for purposes of financing) shall expressly assume the assignor's obligations hereunder, unless otherwise agreed to by the other Party, and no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless the other Party agrees in writing in advance to waive the assignor's continuing obligations pursuant to this PPA; (iii) before any rights or obligations are assigned by a Party, the assignee must first obtain such approvals as are required by any Governmental Authority having jurisdiction; and (iv) except for the collateral assignment by Seller to the Senior Lender, or to a trustee or mortgagee pursuant to the Financing Documents as consented to above, Seller shall not assign this PPA or any interest, right or obligation hereunder to any Person that does not own the Facility.

18.2 Accommodation of Senior Lender. Subject to the terms and conditions set forth herein, Seller shall have the right to pledge, assign or otherwise encumber this Agreement, the Facility, its rights in all Project Agreements and any and all its assets whatsoever to the Senior Lender, or to a trustee or mortgagee pursuant to the Financing Documents for any financing or refinancing pursuant to the Financing Documents. To facilitate Seller's obtaining of financing to operate the Facility, PNM shall enter into such Consents, certifications, legal opinions, representations, information or other documents as may be reasonably requested by Seller or any Senior Lender and shall negotiate in a commercially reasonable manner any modifications to this PPA, the Consent reasonably requested by the Senior Lender as necessary to protect the Senior Lender's interests under this PPA; *provided* that PNM shall have no obligation to provide any consent, enter into any agreement or agree to any such modifications that materially adversely

affects PNM's rights, benefits, risks or obligations under this PPA; *provided, further*, that Seller shall pay the reasonable fees and expenses of legal counsel retained by PNM to provide any legal opinion reasonably requested by Seller or any Senior Lender.

18.3 Notice. Any financing agreement entered into by Seller shall provide that prior to or upon the exercise of trustee's or mortgagee's assignment rights pursuant to said agreement, trustee or mortgagee shall notify PNM of the date and particulars of any such exercise of assignment rights.

18.4 Transfer Without Consent is Null and Void. Any sale, transfer, or assignment of any interest in the Facility or in this PPA made by a Party without fulfilling the requirements of the PPA shall be null and void and shall constitute an Event of Default of such Party pursuant to Article XI.

ARTICLE XIX
MISCELLANEOUS

19.1 Waiver. 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 or exercise 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. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

19.2 Taxes. Seller shall be responsible for any and all present or future federal, state, municipal, or other lawful taxes applicable by reason of the ownership and operation of the Facility and the sale of Facility Benefits under this PPA, and all ad valorem taxes relating to the Facility and Seller's Interconnection Facilities. PNM shall be responsible for any and all present or future federal, state, municipal, or other lawful taxes applicable to or imposed upon the Facility Benefits delivered hereunder from and after the Point of Delivery. Each Party shall and does hereby indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority that are the responsibility of such Party pursuant to this Section 19.2. The Parties shall cooperate to minimize tax exposure; however, neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder.

19.3 Disclaimer of Third Party Beneficiary Rights. In executing this PPA, neither Party is, nor should it be construed to be, extending its credit or financial support for the benefit of any third parties lending money to or having other transactions with the other Party. Nothing in this PPA shall be construed to confer any benefit upon, or to create any duty to, or standard of care with reference to, or, except as to any rights of indemnitees as set forth herein, any liability to, any Person not a Party to this PPA.

19.4 Relationship of the Parties.

(a) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to immense 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 services on behalf of Seller hereunder, 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 PNM for any purpose; nor shall Seller represent to any Person that he or she is or shall become a PNM employee.

19.5 Equal Employment Opportunity Compliance Certification. Seller acknowledges that PNM is an equal opportunity employer. If applicable, the Parties hereby incorporate and agree to abide by the requirements of all applicable equal opportunity and affirmative action clauses as required by federal laws, executive orders, and regulations, including but not limited to 41 CFR §§ 60-1.4(a), 60-1-4(b), 60-250.5(a) and 41 CFR 60-741.5(a).

19.6 Subcontracts and Subcontractors.

(a) Seller shall have the right to have any portion of the construction or any other obligations of Seller under this PPA performed by subcontractors pursuant to written subcontracts between Seller and such subcontractors. No such subcontract shall be inconsistent with the applicable terms and conditions of this PPA or relieve, diminish or modify the obligations of Seller or the rights of PNM hereunder. All such subcontractors required by applicable Law to be qualified to do business in the State of New Mexico shall be so qualified.

(b) Subcontractors shall be selected by Seller and, as between PNM and Seller, Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance and, as between PNM and Seller, any acts or omissions of the subcontractors or unsatisfactory performance. Seller shall be responsible for any Liens, including, without limitation, common law, contractual, statutory and constitutional mechanic's liens, materialman's liens and labor liens, placed on PNM's property by any subcontractor of Seller or otherwise created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Seller or any of its subcontractors or other Person providing labor or materials to Seller or with respect to the Facility or the Site. Seller shall, at Seller's sole expense, discharge and cause to be released any such Lien on PNM's property, whether by payment or posting of an appropriate surety bond in accordance with applicable Law, within ten (10) days after receipt of a written demand from PNM.

19.7 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 without limitation warranties, remedies, or indemnities which obligation shall survive for the period of the applicable statute(s) of limitation.

19.8 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, 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, such invalid, illegal or unenforceable terms, covenants or conditions shall be severed from this Agreement, and

all other terms, covenants, and conditions of the PPA and their application shall remain in force and effect and shall not be affected by the illegal, invalid or unenforceable provisions or by the severance thereof from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provisions, there shall be added automatically as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

19.9 Complete Agreement; Amendments. The terms and provisions contained in this PPA and the Original PPA constitute the entire agreement between PNM and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between PNM and Seller with respect to the subject matter thereof, including (a) in connection with any and all bid submission communications, written or oral, as part of PNM's request for proposals. This PPA may be amended, changed, modified, or altered, *provided* that to be effective, such amendment, change, modification, or alteration must be in writing and signed by both Parties hereto after the Effective Date, and *provided further*, that the Exhibits attached hereto may be changed according to the provisions of Section 12.8.

19.10 Binding Effect. This PPA, as it may be amended, changed, modified, or altered from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties' respective successors-in-interest, legal representatives, and permitted assigns.

19.11 Interpretation. Unless the context of this Agreement otherwise requires:

(a) the headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner to construe or interpret this Agreement;

(b) the gender of all words used herein shall include the masculine, feminine and neuter and the number of all words shall include the singular and plural words;

(c) the terms "hereof", "herein", "hereto", "hereunder" and similar words refer to this entire Agreement and not to any particular Article, Section, Exhibit or any other subdivision of this Agreement;

(d) references to "includes," "including" and similar phrases shall mean "including, without limitation";

(e) references to "Article," "Section" or "Exhibit" are to this Agreement unless specified otherwise;

(f) reference to "Agreement" or any other agreement or document shall be construed as a reference to such agreement or document as the same may be amended, modified, supplemented or restated, and shall include a reference to any document which amends, modifies, supplements or restates, or is entered into, made or given pursuant to or in accordance with its terms;

(g) reference to any document or instrument required to be "in writing", "written" or similar words shall mean a written document signed by the Party sought to be bound thereby; and

(h) reference to any Person shall be construed as a reference to such Person's successors and permitted.

19.12 Counterparts. This PPA may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument. Without limiting the manner in which this Agreement may be executed and delivered, a Party shall be considered to have fully executed and delivered this Agreement by executing a counterpart of this Agreement and sending the execution page by facsimile to the other Party.

19.13 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed, construed and enforced in accordance with the laws of the State of New Mexico, without regard to principles of conflicts of laws. The laws of the State of New Mexico shall govern any dispute, controversy, or claim between the Parties arising out of, relating to, or in any way connected with this Agreement or the remedies of the Parties with respect thereto, including, without limitation, the existence, validity, performance, breach, or termination thereof.

19.14 Confidentiality. This Agreement and any confidential information provided by either Party to the other Party pursuant to this Agreement (the "***Confidential Information***") will be utilized by the receiving Party solely in connection with the purposes of this Agreement or as permitted in this Agreement and will not be disclosed by the receiving Party to any third party, except with the providing Party's written consent and except as permitted in this Agreement. Confidential Information shall not include information which prior to disclosure hereunder was already in the public domain, or which after disclosure hereunder entered the public domain other than as a result of a disclosure by a Party in breach of this Agreement. The Parties acknowledge and agree that Confidential Information may be disclosed to actual and prospective financing parties, suppliers and potential suppliers of major equipment to the Facility, the Interconnection Facilities, the Gas Interconnection Facilities or other facilities related thereto, and other third parties as and solely to the extent necessary for each Party to perform its obligations under this Agreement and the Project Agreements. To the extent that such disclosures are necessary, each Party agrees that it will in disclosing such information seek to preserve the confidentiality of such disclosures, by requiring such third party receiving Confidential Information to be bound by the terms of this Agreement applicable to such Confidential Information. This provision will not prevent either Party from providing any Confidential Information to any court in accordance with a proper discovery request, *provided* that, if feasible, the disclosing Party will give prior notice to the other Party of such disclosure and, if so requested by such other Party and at such other Party's expense, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality. Furthermore, this provision will not prevent either Party from providing any Confidential Information to, or in response to the request of, or pursuant to any proceeding before or any rule or regulation of any Governmental Authority regulating or otherwise having jurisdiction over the disclosing Party.

19.15 Conditions Precedent.

(a) This PPA shall be effective as of the Effective Date; provided that the rights and obligations of the Parties under this PPA shall be contingent on the satisfaction of the following conditions precedent:

(i) PNM's receipt of a final order issued by the NMPRC approving the Parties' entry into this PPA; and

(ii) PNM's receipt of approval by the Boards of Directors of PNM and TXNM Energy, Inc. (the "Boards") approving the Parties' entry into this PPA.

(b) PNM shall (i) submit this PPA for approval by each of the NMPRC and the Boards no later than thirty (30) days following the Effective Date, and (ii) use good faith, commercially reasonable efforts to obtain the approvals described in Section 19.15(a). Seller shall cooperate reasonably with PNM's efforts to make such requests and seek such approvals.

(c) In the event that the NMPRC (i) does not approve this PPA as described herein within three hundred sixty (360) days following the date this PPA is submitted to the NMPRC for approval, or (b) denies PNM's application for NMPRC's approval as described herein, then, in each case, this PPA shall be *void ab initio* and neither Party shall have any further liability hereunder.

19.16 Construction with Original PPA. The Parties (a) acknowledge that the term of the Original PPA overlaps with the Pre-Delivery Term Period under this PPA and (b) agree that the obligations under this PPA and the Original PPA are intended to be without duplication. Without limiting the foregoing, no Party shall be required to pay the same obligation to the other Party twice.

IN WITNESS WHEREOF, the Parties have executed this PPA as of the date first written above.

SELLER:

VALENCIA POWER, LLC

By: Signed by: Katie Bellezza 835D16F3E14446E...
Name: Katie Bellezza
Title: Authorized Signatory

PNM:

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: DocuSigned by: Michael Mertz 8DE1D44E981C4E0...
Name: Michael Mertz
Title: SVP PNM Operations

EXHIBIT A

REQUIREMENTS AND COMPLIANCE STANDARDS FOR DISPATCHABILITY

Attached hereto is a draft version of Exhibit A. The Parties shall cooperate in good faith to mutually agree on a final version of Exhibit A prior to the Delivery Term Start Date. The final Exhibit A that is mutually agreed by the Parties in writing shall thereafter supersede this Exhibit A for all purposes of this PPA.

[*See attached.*]

1. Dispatchability Requirements. Seller shall be capable of providing:

   A. Automatic Generation Control (AGC) in response to control setpoint signals from PNM. Continuous response to PNM setpoint signals at the minimum rate established in the operating procedure over the regulating range of increasing or decreasing;

   B. Phone dispatch of voltage support, solely at the determination of PNM, at a 95% lagging to 95% leading power factor, or greater, at the Point of Delivery;

   C. The minimum regulating range as established in the Operating Procedures for automatic load regulation of the facility;

   D. Two direct ring-down phone circuits to PNM Power Operations and PNM WPM;

   E. The Automatic Voltage Regulator (AVR) and the Power System Stabilizer (PSS) will be operated in Automatic mode unless otherwise directed by PNM. If either component is not in automatic mode, the Seller will notify PNM-Power Operations within 30 minutes of the device being out of automatic mode and provide details of the problem and the expected time to be back in automatic mode. This information will be manually documented and stored in the site NERC compliance files; and

   F. Remote Start Capability.

2. Operations Log. Seller shall maintain an hourly operation log that identifies real-time unit operating information including, but not limited to, the following:

   Current level of unit capacity availability, planned or unplanned maintenance outages or deratings, generator circuit breaker operation and any other significant events related to the operation of the generating unit. Any changes in the generating status or the availability of the generating unit shall be reported immediately to PNM WPM.

3. Telemetry/Generation Load Control Requirements.

   A. PNM shall design, purchase, own, install and test, in accordance with the procedures set forth in this Exhibit, the telemetry equipment, generation load control equipment and the circuits from Seller's Facility to PNM. Generation load control equipment is defined as the equipment and associated hardware necessary to interpret the request for a generation load change and provide a

signal to the distributed control system (DCS) of the Seller's equipment. The Seller shall provide the necessary AGC program within its DCS to receive setpoint, analog and digital signals and send feedback analog and digital signals to PNM's load control equipment to control the units output. Seller shall in no way constrict or modify the generation load change signal path without review and written authorization by PNM.

B. The telemetry and generation load equipment is to provide the following:

Instantaneous gross generation MW and Mvar values, control status, load regulation range limits and any parameters deemed necessary by PNM for automatic generation control. The Seller's DCS shall display gross generation MW and Mvar values which reflect the identical gross MW and MVAr values as those telemetered to PNM. In addition, a redundant Inter-Control Center Communications Protocol (ICCP) remote communications circuit will be provided by PNM to provide all setpoint, analog and digital signals from PNM's generation load equipment installed on PNM's Energy Management System located at PNM's Albuquerque Power Operations Facility.

4. Initial Verification of Compliance.

A. Initial verification that Seller is in compliance with the requirements set forth in Paragraphs I.A through 1.F above (each a "Dispatchability Requirement", and collectively, "Dispatchability Requirements") will be conducted at the Facility by PNM. Seller and PNM will schedule initial verification prior to COD.

B. Testing will be a coordinated effort between PNM and Seller with Seller providing technical support for Seller's equipment and with PNM supplying the test setpoint signal and determining Seller's compliance of these requirements.

5. Periodic Verification of Compliance. Subsequent to the initial verification of compliance with Dispatchability Requirements 1.A through 1.F above, PNM shall have the right, at any time upon reasonable prior notice to Seller, to verify the continued compliance of such requirements. Seller will be notified of test results in the event of any noncompliance. Upon notice from PNM that Seller is out of compliance with Dispatchability Requirement 1.A through I.F above, Seller shall use commercially reasonable efforts to remedy such noncompliance within fifteen (15)

days of the noncompliance notification date.

6. Automatic Generation Control Availability. Seller's Facility shall be available for automatic generation dispatch during on-line hours (excluding facility testing, equipment failure and periods of failure of PNM's telemetry, during which Seller will manually be dispatched by PNM).

7. Availability Reporting. Seller will be responsible for providing accurate and timely updates on the current availability of the Facility to PNM-WPM and PNM-Power Operations. PNM shall have the right to verify at any time, upon reasonable prior notice to the Seller, the current availability reported by Seller by conducting an Availability Verification Test. During the Availability Test, PNM shall dispatch the Facility to the level of available capacity reported by Seller. Deficiencies greater than 1 1/2% between the tested availability and the reported availability will result in derating the Facility's reported capacity to the tested available capacity for the then current hour and subsequent hours until the Seller reports a revised available capacity. Upon receiving notice from the Seller of a revised availability, PNM shall have the option of conducting a second Availability Verification Test. If PNM chooses not to conduct a second Availability Test at that time, the Facility will be considered available to the full level of Seller's reported availability until PNM conducts a subsequent Availability Verification Test.

Valencia Power, LLC Public Service Company of New Mexico

EXHIBIT B

FACILITY DESCRIPTION

The Facility is located in Valencia County, New Mexico approximately 2 miles east of the town of Belen along Highway 304. It is located within the Rio Grande Industrial Park on an approximately 18.6 acre parcel. The project consists of a single General Electric Frame 7FA.03 simple cycle gas turbine.

The Point of Delivery is the existing PNM Tome Substation. Seller interconnects with PNM's existing 115kV line.

The Facility will continue to be fueled by high pressure natural gas (with up to 60% hydrogen by volume following implementation of GTOP and FlameSheet or similar combustion upgrades that are included as part of the Facility Upgrades) delivered to the Facility through its existing tap, pipeline and associated facilities interconnected to Transwestern. The Transwestern pipe is an interstate line approximately three miles from the Site.

The supply line to the Facility is constructed of alloyed carbon steel in accordance with American Petroleum Institute (API) standards and specifications for utility grade, continuous service duty. The line has provided fuel to the existing GE Frame 7FA turbine since the commercial in-service date of that unit in 2008.

FACILITY UPGRADES

As of the Effective Date, the anticipated parameters of the expected Facility Upgrades are as follows:

- addition of FlameSheet, FlexRamp, FlexStart and GTOP:
    - up to a 15 megawatt increase to the net capacity of the Facility, for a net capacity of up to 169 megawatts seasonal adjusted average (or 173 megawatts adjusted winter adjusted rating);
    - Fast Start capability of achieving Full Speed No Load (FSNL) to Contract Capacity in 7 minutes, to be verified through testing performed in conjunction with Facility Upgrades;
    - ramp rate of up to 22% of Contract Capacity per minute;
    - Minimum Load as low as 55 megawatts; and
    - up to 60% hydrogen blend (capability only).

The above anticipated parameters shall be adjusted to reflect the final specifications provided by the applicable equipment suppliers and PSM.

EXHIBIT C

FORM OF CONSENT

If Seller notifies Buyer that an actual or potential Senior Lender is reasonably expected to require Buyer to enter into a consent to collateral assignment, the Parties shall cooperate in good faith to mutually agree on a form of a consent to be attached hereto as Exhibit C. The final Exhibit C that is mutually agreed by the Parties in writing shall thereafter supersede this Exhibit C for all purposes of this PPA.

EXHIBIT D

SEASONAL CAPACITY TEST

The Seasonal Capacity Test is the testing procedure to determine the seasonal net dependable capacity of the Facility during the Summer Season and the Winter Season after supplying power to all of the Facility's auxiliary equipment. The period of the Seasonal Capacity Test shall not be less than four (4) continuous hours. The Seasonal Capacity of the Facility as demonstrated pursuant to the Seasonal Capacity Test shall be determined based on the average, seasonally adjusted net electrical energy of the Facility at the Point of Delivery during the four clock hour test period. The adjustments required to determine the Seasonal Capacity will include adjustments to correct the test results to the Base Ambient Conditions, and other corrections such as barometric pressure, fuel LHV and C/H ratios, elevations and water flow conditions, in accordance with ASME PTC 22 Table 3-1.5.2 Required Measurements, and set forth in the Test Protocols and Procedures. Correction curves will be updated following any equipment or tuning changes that may affect performance and will be provided by the original equipment manufacturer or upgraded technology provider. During the Seasonal Capacity Test, the Facility shall be operated in full compliance with all applicable Laws, Required Permits, Good Utility Practices and such other requirements as set forth in the Test Protocols and Procedures and this Agreement. In the event the Facility fails to operate during the Seasonal Capacity Test in accordance with any requirements, the Seasonal Capacity Test shall be reperformed.

A Seasonal Capacity Test shall be performed prior to the Delivery Term Start Date. From and after the Delivery Term Start Date, a Seasonal Capacity Test shall be performed once per Delivery Year, alternating between the Summer Season and the Winter Season each Delivery Year. PNM shall conduct each Seasonal Capacity Test on an operationally optimal date and time of day mutually agreed upon by PNM and Seller. Each Seasonal Capacity Test shall be conducted in accordance with the Test Protocols and Procedures and this Agreement. PNM may install test equipment, obtain necessary test readings, and specify equipment operation mode to insure test conditions are met as set forth in the Test Protocols and Procedures and this Agreement; *provided* that in no event shall PNM be entitled to specify operating modes for the Facility or any of the equipment of the Facility that do not meet or that exceed the manufacturer's recommended limits for operation of such equipment. If, at any time, either Seller or PNM believes that the actual capacity of the Facility does not equal the then current Seasonal Capacity, either Seller or PNM at its sole discretion may require that an additional Seasonal Capacity Test for the Season be performed; *provided* that Seller may not require more than two (2) additional Seasonal Capacity Tests during any Delivery Year. Such additional Seasonal Capacity Test shall be at the requesting Party's expense. Such Test will be conducted on a date mutually determined by PNM and Seller.

During the Seasonal Capacity Test all auxiliary equipment needed for normal operation of the Facility shall be in service and shall be in typical operating condition and in a normal state of maintenance. This includes equipment associated with any process or thermal host connected to the Facility. Extended, peak firing or emergency capability shall be excluded during the Seasonal Capacity Test and all equipment which is not intended to be used on a normal daily basis which could be used to extend capability shall be excluded during the test period. Seller shall be required to provide operational records to be used to substantiate the normal mode of operation. Seller shall

also provide documentation certifying that the instrumentation used in verifying the Seasonal Capacity Test has been calibrated within sixty (60) days prior to the Test.

Steady state conditions shall be obtained for at least a one-hour period prior to starting the Seasonal Capacity Test. Metering equipment and instrumentation shall be calibrated within 60 days prior to the Seasonal Capacity Test. Any equipment used for the Test shall meet the "Maximum Allowable Measurement Uncertainties" listed in ASME PTC 22 Table 4-1, inclusive of all ambient effects on the test equipment. During the Seasonal Capacity Test, the Facility's power output shall be maintained at a near constant level, and steady state operating conditions shall be held throughout the Test. All test runs shall meet the "Maximum Permissible Standard Deviations" in ASME PTC 22 Table 3-3.5. PNM's metering equipment at the Point of Delivery will be utilized to measure the Facility's net power output during the test period in accordance with the Test Protocols and Procedures. During the Seasonal Capacity Test and its preparation, Seller shall give PNM personnel access to the Facility's equipment and instrumentation for observation and recording of process operating parameters and conditions.

Seller shall provide to PNM historic seasonal operational data from Facility's operation. Such data shall include, but not be limited to thermal energy supplied to and utilized by industrial or commercial processing loads, and heating and/or cooling processing loads. Prior to the Seasonal Capacity Test, PNM shall provide Seller with a comprehensive list of the historic seasonal operational data required.

The ambient air temperature measurement for the Seasonal Capacity Test will represent surrounding ambient air temperature and not ambient air temperature which is heated or cooled by nearby equipment. For the purpose of the Seasonal Capacity Test, having all compressor intake air conditioning equipment (i.e., evaporative coolers, humidifiers, heaters, etc.) in service, shall be considered as the normal mode of operations to the extent that Seller can prove to PNM's reasonable satisfaction, with historical records, that said equipment is normally in service. The performance of intake air conditioning equipment shall be adjusted to historic ambient air conditions. Combustion turbine exhaust temperatures will not exceed normal operating standards established by the turbine manufacturer. Barometric pressure will be measured with an accuracy of +/- 0.075%, inclusive of ambient temperature effects, per ASME PTC 22 Table 4-1. Absolute pressure transmitters (e.g. Rosemount 3051) shall not be used due to significantly higher accuracy effects due to ambient temperature.

EXHIBIT E

NET HEAT RATE TEST

The Net Heat Rate Test is the testing procedure to determine the Net Heat Rate of the Facility during the Summer Season and the Winter Season after supplying power to all of the Facility's auxiliary equipment. The Net Heat Rate Test will be performed at the full load point of the Facility and adjusted to the Base Ambient Conditions. Testing shall be performed by following the Test Protocols and Procedures that will be mutually agreed upon by the Parties. The Test Protocols and Procedures will be developed using applicable ASME, HEI and/or CTI codes. The adjustments required to determine the Net Heat Rate Test may include adjustments corrections such as condensing water availability and temperature, fuels, steam heating loads, elevations and water flow conditions, as applicable, as set forth in the Test Protocols and Procedures. During the Net Heat Rate Test, the Facility shall be operated in full compliance with all applicable Laws, Required Permits, Good Utility Practices and such other requirements as set forth in the Test Protocols and Procedures and this Agreement. In the event the Facility fails to operate during the Net Heat Rate Test in accordance with any requirements, the Net Heat Rate Test shall be reperformed.

A Net Heat Rate Test shall be performed prior to the Delivery Term Start Date. Commencing with the first Season following the Delivery Term Start Date, a Net Heat Rate Test shall be performed at least once during each Season on a date mutually agreed upon by PNM and Seller. PNM may install test equipment, obtain necessary test readings, and specify equipment operation mode to insure test conditions are met as set forth in the Test Protocols and Procedures and this Agreement; *provided* that in no event shall PNM be entitled to specify operating modes for the Facility or any of the equipment of the Facility that do not meet or that exceed the manufacturer's recommended limits for operation of such equipment.

During the Net Heat Rate Test all auxiliary equipment needed for normal operation of the Facility shall be in service and shall be in typical operating condition and in a normal state of maintenance. Seller shall be required to provide operational records to be used to substantiate the normal mode of operation.

Steady state conditions shall be obtained for at least a one hour period prior to starting the Net Heat Rate Test. Metering equipment and instrumentation shall be calibrated within 60 days prior to the Net Heat Rate Test. During the Net Heat Rate Test, the Facility's power output shall be maintained at a near constant level, at full load and at steady state operating conditions. PNM's metering equipment at the Point of Delivery will be utilized to measure the Facility's net power output during the test period in accordance with the Test Protocols and Procedures. During the Net Heat Rate Test and its preparation, Seller shall give PNM personnel access to the Facility's equipment and instrumentation for observation and recording of process operating parameters and conditions.

The ambient air temperature measurement for the Net Heat Rate Test will represent surrounding ambient air temperature and not ambient air temperature which is heated or cooled by nearby equipment. For the purpose of the Net Heat Rate Test, having all compressor intake air conditioning equipment (i.e., evaporative coolers, humidifiers, heaters, etc.) in service, shall be

considered as the normal mode of operations to the extent that Seller can prove to PNM's reasonable satisfaction, with historical records, that said equipment is normally in service. The performance of intake air conditioning equipment shall be adjusted to historic ambient air conditions. Combustion turbine exhaust temperatures will not exceed normal operating standards established by the turbine manufacturer. Steam or water injection rates for emission control shall not exceed the levels specified in the technical support information in the application for the air quality permit included within the Permits.

PNM may also require the Seller to perform heat rate testing at up to four additional load points, for the sole purpose of developing a unit dispatch heat rate curve for dispatch of the unit whether the Facility is used for AGC or not. For avoidance of doubt, the additional heat rate tests are not for guarantee and are for informational purposes only.

EXHIBIT F

EAF CALCULATION

EAF for a Month shall be determined as follows:

EAF = (Available Energy + FME Credit + SME Credit) / PE

Where:

"***Available Energy***" for a Month means the amount of energy, expressed in kWh, associated with the Net Capability that is available from the Facility for dispatch and receipt by PNM at the Point of Delivery during such Month, taking into account all planned and unplanned deratings and outages of the Facility. However, actual deratings due to weather conditions shall not be considered a derating of the Facility as long as the appropriate compressor intake air conditioning equipment (i.e., evaporative coolers or chillers, humidifiers, heaters, etc.) are operating. As long as the Facility is able to produce the Net Capability under applicable atmospheric conditions, it shall not be deemed to be derated. Energy associated with the Net Capability will be considered to be available in any Hour where: (i) the Facility is disconnected from PNM's system pursuant to the Interconnection Agreement and the disconnection is not caused by actions or omissions of Seller or problems with the Facility; (ii) the Facility is unavailable due to PNM's failure to supply Gas to the Facility (or failure to supply Gas which meets the specifications and other requirements of Section 4.1) when PNM has dispatched the Facility, or due to any other action taken by PNM which interrupts the supply of Gas to the Facility, so long as such failure to supply Gas or interruption in the supply of Gas is not caused by actions or omissions of Seller or problems with the Facility; (iii) the Facility cannot provide capacity and energy due to an event of Force Majeure affecting PNM; (iv) the Facility cannot operate due to restrictions resulting from PNM's electric transmission constraints; (v) the Facility cannot operate because it has exhausted the limits of the operating restrictions imposed by the applicable air quality permit; so long as (A) the limits of the operating restrictions are no more onerous than those contained in the air quality permit included in the Permits, and (B) the limits of the operating restrictions imposed by the applicable air quality permit are exhausted as a result of the dispatch of the Facility by PNM and not due to any equipment malfunction or failure, or problems with the Facility, or any actions or omissions of Seller; (vi) the Facility cannot operate due to curtailment or interruption of the delivery of raw water to the Facility from New Mexico Water, which curtailment or interruption affects the applicable geographic region and is not caused by actions or omissions of Seller or problems with the Facility; (vii) the Facility cannot operate due to an outage, malfunction or other problem with PNM's Interconnection Facilities that is not caused by actions or omissions of Seller or problems with the Facility; or (viii) PNM has curtailed or interrupted the delivery of capacity and energy from the Facility for any reason not arising from actions or omissions of Seller or problems with the Facility; *provided* that in each case, energy associated with the Net Capability would have been available but for the existence of the circumstances set forth in the preceding clauses (i) through (viii). Available Energy shall be calculated as the sum, for all Hours in the applicable Month, of the amount of energy associated with the Net Capability that is available from the Facility for dispatch and receipt by PNM at the Point of Delivery during each individual Hour.

"***FME***" for a Month means the amount of energy, expressed in kWh, associated with the Net Capability that is not available from the Facility for dispatch and receipt by PNM at the Point of Delivery during such Month due to lightning, floods, earthquakes, hurricanes, tornadoes, sabotage, vandalism beyond that which could reasonably be prevented, terrorism, war, riots or other similar attacks affecting Seller; *provided* that such events constitute a Force Majeure affecting Seller in accordance with and subject to the terms and conditions of Article XIII and Seller complies with the terms and conditions of Article XIII with respect thereto. FME shall be calculated as the sum, for all Hours in the applicable Month, of the amount of energy associated with the Net Capability that is unavailable during each individual Hour due to the events of Force Majeure described in this paragraph.

"***FME Cap***" means an amount, expressed in kWh, equal to the product of the Net Capability multiplied by one thousand four hundred forty (1440) hours.

"***FME Credit***" for a Month means an amount, expressed in kWh, equal to the lesser of (i) the FME for such Month or (ii) the difference of (A) the FME Cap *less* (B) the aggregate amount of FME for such Month and each of the immediately preceding eleven (11) Months; *provided* that the FME Credit shall not be less than zero (0).

"***PE***" for a Month means an amount, expressed in kWh, equal to the product of the Net Capability multiplied by the number of Hours during such Month (to the extent such Hours are within the Delivery Term).

"***SME***" for a Month means the amount of energy, expressed in kWh, associated with the Net Capability that is not available from the Facility for dispatch and receipt by PNM at the Point of Delivery during such Month due to Scheduled Outages/Deratings that are scheduled and approved in accordance with Section 9.1. SME shall be calculated as the sum, for all Hours in the applicable Month, of the amount of energy associated with the Net Capability that is unavailable during each individual Hour due to a Scheduled Outage/Derating that is scheduled and approved in accordance with Section 9.1.

"***SME Cap***" means an amount, expressed in kWh, equal to the product of the Net Capability multiplied by three hundred sixty (360) hours.

"***SME Credit***" for a Month means an amount, expressed in kWh, equal to the lesser of (i) the SME for such Month or (ii) the difference of (A) the SME Cap less (B) the aggregate amount of SME for such Month and each of the immediately preceding eleven (11) Months; *provided* that the SME Credit shall not be less than zero (0).

Notwithstanding anything contained herein to the contrary, for each Hour during the applicable period, (i) the sum of the Available Energy for such Hour plus the FME Credit for such Hour plus the SME Credit for such Hour shall in no event exceed (ii) the product of the Net Capability multiplied by one (1) Hour.

EXHIBIT G

TRANSPORTER GAS QUALITY REQUIREMENTS

AS OF THE EFFECTIVE DATE

[*See attached.*]

EXCERPT FROM FERC NGA GAS TARIFF, FIFTH REVISED VOLUME NO. 1 OF TRANSWESTERN PIPELINE COMPANY, LLC

2. QUALITY

2.1 The gas stream delivered into Transporter's pipeline system by Shipper or Shipper's designee at receipt points shall conform to each of the following quality specifications:

A. shall be commercially free from objectionable odors, solid matter, dust, gums, and gum forming constituents, or any other substance which interferes with the intended purpose or Merchantability of the gas, or causes interference with the proper and safe operation of the lines, meters, regulators, or other appliances through which it may flow;

B. shall contain not more than seven (7) pounds/MMcf of water at the temperature and pressure at which the gas is delivered into Transporter's pipeline system;

C. shall contain no hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered into Transporter's pipeline system;

D. shall contain not more than 0.1% by volume of oxygen;

E. shall contain not more than 2.0% by volume of carbon dioxide;

F. shall contain not more than a combined total of 3.0% by volume of carbon dioxide plus nitrogen;

G. shall contain not more than one quarter (1/4) grain of hydrogen sulfide per one hundred (100) cubic feet of gas;

H. shall contain not more than 0.3 grains of mercaptan sulfur per one hundred (100) cubic feet of gas;

I. shall contain not more than 0.75 grains of total sulfur per one hundred (100) cubic feet of gas;

J. shall not contain any toxic or hazardous substance in concentrations which, in the normal use of the gas, may be hazardous to health, injurious to pipeline facilities, or be a limit to Merchantability or be contrary to applicable government standards;

K. shall have a minimum total heating value of not less than nine hundred seventy (970) Btu's per cubic foot, and shall have a maximum total heating value of not more than eleven hundred and ten (1110) Btu’s per cubic foot; and

L. shall have a temperature of not less than forty (40) degrees Fahrenheit, and not more than one hundred twenty (120) degrees Fahrenheit.

2.2 Transporter may not refuse to accept receipt of gas with a Hydrocarbon Dew point equal to or less than 15 degrees Fahrenheit provided that such gas satisfies all other applicable provisions of Transporter's Tariff. This standard shall be referred to as Transporter's Hydrocarbon Dew Point Safe Harbor.

A. Transporter may, from time to time, as operationally necessary, establish and post on its Internet Website a limit on Hydrocarbon Dew point for receipts on specified segments or other specified locations on its system to prevent hydrocarbon liquid fallout, or to ensure that gas will be accepted for delivery into interconnects with interstate pipelines, intrastate pipelines, end-users or directly connected local distribution companies; provided, however, Transporter may not make a posting that sets a Hydrocarbon Dew point limitation of less than 15 degrees Fahrenheit.

B. When Transporter determines there is an operational necessity to post a Hydrocarbon Dew point on a specific line segment or location, Transporter shall post on its Internet Website each blended Hydrocarbon Dew point Transporter calculates for a line segment or location within 24 hours of such calculation, and the method by which the Hydrocarbon Dew point value was calculated. Transporter will include in such posting the anticipated duration of the limitation as well as an explanation of the basis for the Hydrocarbon Dew point limitation.

C. Transporter will provide as much prior notice as reasonably practicable and will attempt to provide such notice at least two (2) days prior to the effective date of the limitation.

D. When Transporter posts a Hydrocarbon Dew point limit for a particular pipeline segment or location, all gas receipts into the affected area from interconnects or from any adjacent pipeline segments feeding gas directly into the affected pipeline segment must meet the posted Hydrocarbon Dew point limit for the affected pipeline segment.

E. Transporter shall post Hydrocarbon Dew point limitations for a given line segment or location only 1) to the extent necessary to prevent liquid fallout from occurring, 2) in order to manage and operate Transporter's system in a safe and reliable manner, and 3) as required to ensure that gas will be accepted for delivery at interconnects with interstate pipelines, intrastate pipelines, end-users or directly connected local distribution companies. Such posted Hydrocarbon Dew point limitations shall remain in effect no longer than necessary.

F. Transporter shall perform Receipt Point Hydrocarbon Dew point calculations for this Section 2.2 using the Peng-Robinson equation of state and C6+ assumptions consistent with industry practices. Upon a Shipper's request, Transporter shall conduct a C9+ analysis; provided that in no event shall Transporter be required to conduct such C9+ analysis at any one receipt point more frequently than once every twelve months. Transporter shall post on its Internet Website the chromatograph data available at not less than four (4) locations, including West of Thoreau, San Juan, Panhandle and West Texas mainlines, to monitor the gas quality of the blended gas stream existing in the mainline system. These gas quality monitoring locations shall be at points where the aggregated gas stream encompasses all or most of the gas from the West of Thoreau, San Juan, Panhandle and West Texas mainlines, respectively.

2.3 Transporter may refuse to accept any gas stream from Shipper or Shipper's designee which fails to conform with the gas quality specifications itemized in Sections 2.1 and 2.2. above; however Transporter, in its reasonable discretion exercised on a not unduly discriminatory basis, may accept any gas stream received into its pipeline system at receipt points, provided that such gas will not result in a blended gas stream which does not comply with the gas quality specifications listed in Sections 2.1 and 2.2 above (provided however, that the blended gas stream for deliveries in the East of Thoreau area may contain not more than 2.0% by volume of carbon dioxide and a combined total of up to 5.0% by volume of carbon dioxide plus nitrogen), or will not prevent delivery of the blended gas stream into a downstream pipeline and other points of delivery, and in the reasonable judgment of Transporter, will not adversely impact Transporter's facilities, pipeline integrity or operations. Transporter may, but is not obligated to, process or treat the gas stream on its system to assure that the gas stream meets Transporter's gas quality specifications.

Any Shipper on Transporter's system shall have the option of: (i) processing the volumes it owns or (ii) entering into contractual arrangements with third-party plant operators for such processing.

2.4 Except as provided in Section 2.5 below, the gas stream delivered to Shipper or Shipper's designee by Transporter at the delivery points shall conform to each of the gas quality specifications set forth in Sections 2.1, 2.2, and 2.3 above, except that delivery points that are located in the West of Thoreau Area shall not have a maximum heating value limitation as reflected in Section 2.1.K, subject to the presence of substances in Transporter's pipeline system as of January 1, 1990. If the gas delivered by Transporter to any downstream pipeline meets the quality specifications of Transporter but does not meet the downstream pipeline specifications, then Transporter shall use reasonable efforts to work with such downstream pipeline to resolve such differences to allow gas deliveries and the downstream pipeline shall have the continuing right to refuse to accept such gas deliveries.

2.5 If the gas stream delivered by Transporter to Shipper or Shipper's designee shall fail at any time to conform to any of the quality specifications set forth above, Shipper will notify Transporter of such deficiency and if Transporter fails to remedy such deficiency promptly, Shipper may, at its option, refuse to accept further delivery pending correction by Transporter.

2.6 If the gas offered for transportation hereunder shall fail at any time to conform to the quality provisions set forth in the Service Agreement between Transporter and Shipper, or if in Transporter's sole judgment such gas may cause harm to its facilities, then Transporter shall notify Shipper and Operator of such deficiency and may, at its option, refuse to accept receipt pending correction by Shipper or Operator.

2.7 With respect only to the maximum total heating value quality specification set forth in Section 2.1.K, Transporter and a point operator that operates multiple receipt points delivering gas into Transporter's pipeline system may agree that the volumes from designated receipt points will be considered in the aggregate for purposes of determining whether such volumes comply with the maximum total heating value quality specification. Any volumes to be aggregated shall be subject to the following conditions:

i. All such designated receipt points shall be in the same area of Transporter's system (i.e., either West Texas Lateral, Panhandle Lateral, or San Juan Lateral); and

ii. All volumes from such designated receipt points shall be adequately blended in Transporter's system, as determined by Transporter in its reasonable discretion exercised on a not unduly discriminatory basis, prior to delivery to any downstream delivery point affected by such volume.

When the aggregated heating value, calculated on a volume weighted average basis per day, is below the maximum total heating value set forth in Section 2.1.K, each of the designated receipt points therein shall be deemed to be in compliance with the maximum total heating value quality specification set forth in Section 2.1.K.

EXCERPT FROM THE FERC GAS TARIFF, THIRD REVISED VOLUME NO. 1A OF EL PASO NATURAL GAS COMPANY, L.L.C.

3. QUALITY

3.1 General Specifications. Unless otherwise provided in Sections 3.2 and/or 3.4 of the GT&C, Shipper warrants that all Natural Gas received by Transporter at any mainline Receipt Point(s) shall conform to the following specifications and must be, in Transporter's reasonable judgment, otherwise merchantable:

(a) Liquids - The gas shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is received. The gas shall in no event contain water vapor in excess of seven (7) pounds per million standard cubic feet.

(b) Hydrocarbon Dew Point - The hydrocarbon dew point of the gas received shall not exceed twenty degrees Fahrenheit (20°F) at normal pipeline operating pressures.

(c) Total Sulfur - The gas shall not contain more than five (5) grains of total sulfur, which includes hydrogen sulfide, carbonyl sulfide, carbon disulfide, mercaptans, and mono-, di- and poly-sulfides, per one hundred (100) standard cubic feet. The gas shall also meet the following individual specifications for hydrogen sulfide, mercaptan sulfur or organic sulfur:

(i) Hydrogen Sulfide - The gas shall not contain more than one-quarter (0.25) grain of hydrogen sulfide per one hundred (100) standard cubic feet.

(ii) Mercaptan Sulfur - The mercaptan sulfur content shall not exceed more than three-quarters (0.75) grain per one hundred (100) standard cubic feet.

(iii) Organic Sulfur - The organic sulfur content shall not exceed one and one- quarter (1.25) grains per one hundred (100) standard cubic feet, which includes mercaptans, mono-, di- and poly-sulfides, but it does not include hydrogen sulfide, carbonyl sulfide or carbon disulfide.

(d) Oxygen - The oxygen content shall not exceed two-tenths of one percent (0.2%) by volume and every reasonable effort shall be made to keep the gas delivered free of oxygen.

(e) Carbon Dioxide - The gas shall not have a carbon dioxide content in excess of two percent (2%) by volume, except for gas acceptable under Sections 3.2 and 3.4 of the GT&C.

(f) Diluents - The gas shall not at any time contain in excess of three percent (3%) total diluents (the total combined carbon dioxide, nitrogen, helium, oxygen, and any other diluent compound) by volume, except for gas acceptable under Sections and 3.4 of the GT&C.

(g) Dust, Gums and Solid Matter - The gas shall be commercially free of dust, gums and other solid matter.

(h) Heating Value - The gas shall have a Heating Value of not less than 967 Btu per cubic foot.

(i) Temperature - The gas received by Transporter shall be at temperatures not in excess of one hundred twenty degrees Fahrenheit (120°F) nor less than fifty degrees Fahrenheit (50°F). Any party tendering gas at a temperature standard less than fifty degrees Fahrenheit (50°F) shall receive a waiver of such standard only if a test has been conducted in accordance with procedures set forth in Section 3.10(b) hereof and the results from such test demonstrate that the particular segment of the pipeline tested can be safely operated below the fifty degrees Fahrenheit (50°F) temperature standard.

(j) Deleterious Substances - The gas shall not contain deleterious substances in concentrations that are hazardous to health, injurious to pipeline facilities or adversely affect merchantability.

3.2 Grandfathered Receipts. Transporter agrees that at certain grandfathered plant Receipt Points and Interconnects on Transporter's system described below, where gas does not conform to the carbon dioxide and/or the total diluent specification set forth in Sections 3.1(e) and (f) of the GT&C, gas shall be received according to the provisions of this Section 3.2 which are based on the highest non-conforming monthly average percentages of carbon dioxide and total diluents for a Month during the twelve (12) Month base period ended July 31, 1990. Under this Section 3.2:

(a) Transporter shall accept gas with carbon dioxide and/or total diluents at percentages up to the non-conforming specifications at volumes up to the residue volume at the plant design capacity or historical Interconnect volumes, as such existed on July 31, 1990, provided, however, that to the extent Transporter must curtail non- conforming volumes to meet Transporter's Delivery Point specifications for carbon dioxide and/or total diluents, Transporter shall curtail volumes at these plants down to 125% of historical volumes.

(b) Historical volumes for non-conforming plants shall be deemed to be the daily average for the highest monthly tailgate volume delivered to Transporter during the twelve (12) Month base period ended July 31, 1990 and in the event a non-conforming plant or plants are closed, Transporter shall transfer the applicable historical volumes to another plant owned by the same party.

(c) The identification of the non-conforming plants, the grandfathered specifications and the historical volumes are set forth on the table below.

3.2 Grandfathered Receipts
(c) (continued)

NON-CONFORMING PLANTS

GRANDFATHERED SPECIFICATIONS
HISTORICAL

LOCATION	METER CODE	CO2 MOL %	TOTAL DILUENTS MOL%	VOLUME (MCF/D)
Slaughter Plant (IAMSLAUG)	77-039	-	11.89	6,915
Jal Complex (IJALCPLX)	01-814	-	4.31	28,518
Jameson Plant (ISUNJAME)	77-078	-	7.02	2,823
Midkiff Plant (IMIDKIFF)	01-079	-	4.95	39,371
Goldsmith Plant (IPHGOLDS)	02-381	-	5.23	62,267
Lee Plant (IPHLEE)	77-025	-	7.34	27,484
Eunice Plant (IPHEUNIC)	77-287	-	5.15	57,672
Fullerton Plant (IPHFULTN)	77-289	-	6.18	28,200
Spraberry Plant (IPHSPBRY)	77-248	-	4.64	11,277
San Juan River Plant (ISJRVPLT)	01-125	-	4.35	32,827
Sterling Plant (ICONSTER)	14-447	3.55	4.09	37,390
TXL Plant (ISHTXL)	77-029	-	6.17	12,054
Terrell Plant (ITERRELL)	01-596	2.89	4.53	102,708
Denton Plant (IDENTON)	77-001	-	5.02	2,554
Perkins Plant (IUTPERKN)	77-068	-	10.19	9,178
Val Verde Plant (IMOITRKA)	14-136	2.13	-	195,985
Monument Plant (IWARMONU)	77-045	-	4.04	31,576
Saunders Plant (IWARSAUD)	77-046	-	5.75	12,421

3.2 Grandfathered Receipts (continued)

(d) The identification of the non-conforming Interconnects, the grandfathered specifications and the historical volumes are set forth on the table below.

NON-CONFORMING INTERCONNECTS

LOCATION	METER CODE	CO2 MOL %	TOTAL DILUENTS MOL%	HISTORICAL VOLUME (MCF/D)
Big Blue Receipt Point (IBIGBLUE)	14-091	-	9.50	11,900
Ignacio Dry Gas (ICOLODRY)	01-127	3.13	3.22	37,595
Northern Natural Plains (INN30PLA)	40-018	-	4.22	111,072
Plains Compressor (Westar-Felmac) (IW40-043)	40-043	-	4.50	8,464

(e) In addition, Transporter agrees to accept, on a grandfathered basis, gas that does not conform to the sulfur specifications set forth in Section 3.1(c) of the GT&C for Natural Gas received at the tailgate of the Terrell Plant, based on the actual monthly highest non-conforming concentrations during the twelve (12) Month base period ending July 31, 1990. The sulfur specification Transporter shall accept for Natural Gas at volumes up to the residue volume at plant design capacity received at the tailgate of the plant is identified below.

Grandfathered Non-conforming Sulfur Specifications
(grains per 100 standard cubic feet)

	HYDROGEN SULFIDE	HISTORICAL VOLUME (MCF/D)
Terrell Plant	0.45	102,708

3.3 Delivery Specifications. Except as otherwise provided below, all Natural Gas delivered by Transporter shall conform to the following specifications:

(a) Liquids - The gas shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered. The gas shall in no event contain water vapor in excess of seven (7) pounds per million standard cubic feet.

(b) Hydrocarbon Dew Point - The hydrocarbon dew point of the gas delivered shall not exceed twenty degrees Fahrenheit (20°F) at a pressure of 600 psig.

(c) Total Sulfur - The gas shall not contain more than three-quarters (0.75) grain of total sulfur per one hundred (100) standard cubic feet, which includes hydrogen sulfide, carbonyl sulfide, carbon disulfide, mercaptans, and mono-, di- and poly- sulfides. The gas shall also meet the following individual specifications for hydrogen sulfide, mercaptan sulfur or organic sulfur:

(i) Hydrogen Sulfide - The gas shall not contain more than one-quarter (0.25) grain of hydrogen sulfide per one hundred (100) standard cubic feet.

(ii) Mercaptan Sulfur - The mercaptan sulfur content shall not exceed more than three-tenths (0.3) grain per one hundred (100) standard cubic feet.

(iii) Organic Sulfur - The organic sulfur content shall not exceed five-tenths (0.5) grain per one hundred (100) standard cubic feet, which includes mercaptans, mono-, di- and poly-sulfides, but it does not include hydrogen sulfide, carbonyl sulfide or carbon disulfide.

(d) Oxygen - The oxygen content shall not exceed two-tenths of one percent (0.2%) by volume and every reasonable effort shall be made to keep the gas delivered free of oxygen.

(e) Carbon Dioxide - The gas shall not have a carbon dioxide content in excess of three percent (3%) by volume.

(f) Diluents - The gas shall not at any time contain in excess of four percent (4%) total diluents (the total combined carbon dioxide, nitrogen, helium, oxygen, and any other diluent compound) by volume.

(g) Dust, Gums and Solid Matter - The gas shall be commercially free from solid matter, dust, gums, and gum forming constituents, or any other substance which interferes with the intended purpose or merchantability of the gas, or causes interference with the proper and safe operation of the lines, meters, regulators, or other appliances through which it may flow.

(h) Heating Value - The gas shall have a Heating Value of not less than 967 Btu per cubic foot. For Natural Gas delivered at the border between the States of Arizona and California, the gas shall have a Heating Value of not less than 995 Btu per cubic foot.

(i) Temperature - The gas shall be delivered at temperatures not in excess of one hundred twenty degrees Fahrenheit (120°F) nor less than fifty degrees Fahrenheit (50°F) except during those times when due to normal operating conditions and/or seasonal ambient temperatures on or near the pipeline system the temperature may drop below such lower limit.

(j) Deleterious Substances - The gas shall not contain any toxic or hazardous substance, in concentrations which, in the normal use of the gas, may be hazardous to health, injurious to pipeline facilities or be a limit to merchantability.

(k) If, at any time, gas delivered by Transporter shall fail to substantially conform to the specifications set forth in this Section 3.3 (a) - (j) of the GT&C, Shipper or its designee agrees to notify Transporter of such deficiency. Shipper, or its designee, may agree to waive Transporter's compliance with its delivery specifications or, if Transporter fails to promptly remedy any such deficiency within a reasonable time, then Shipper or its designee may, at its option, refuse to accept delivery pending correction of the deficiency by Transporter or continue to accept delivery and make such changes as necessary to cause the gas to conform to such specifications, in which event Transporter shall reimburse Shipper or its designee for all reasonable expenses incurred by Shipper or its designee in effecting such changes.

3.4 Specification Exemptions. Transporter, in its reasonable discretion and judgment, exercised on a not unduly discriminatory basis, may accept gas that does not conform to the quality specifications in Section 3.1 or 3.2 of the GT&C but meets the conditions set forth below, provided that Transporter determines that such acceptance will not interfere with its ability to: (1) maintain an acceptable gas quality in its pipeline through prudent and safe operation of Transporter's pipeline system and any related storage facility;(2) ensure that such gas does not adversely affect Transporter's ability to operate its system and to provide adequate service to its customers consistent with the applicable Rate Schedule and the GT&C; and (3) ensure that such gas does not adversely affect Transporter's ability to deliver gas at its Delivery Points.

(a) Transporter may accept gas that exceeds the total diluents specifications as set forth in Section 3.1(f) in Lea, Chaves, and San Juan Counties, New Mexico provided that: (i) the maximum quantity received is no greater than 6,000 Mcf/day; (ii) total diluents are no greater that 6.0%; (iii) the gas meets all other gas quality specifications set forth in Section 3.1; (iv) received volumes will not impact the merchantability of the commingled gas stream; and (v) the Shipper or Operator has provided Transporter with written notice of its intent to deliver gas pursuant to this exemption.

(b) Transporter may accept gas with total diluents not exceeding 4% (four percent)for receipts in the Keystone, Plains and Waha areas, provided (i)the Btu content of such gas is not less than 1000 Btu/cubic feet; (ii) the gas meets the other gas quality specifications set forth in Section 3.1 of the GT&C; (iii) that the Shipper or Operator has installed an online chromatograph and any required appurtenances to monitor the gas quality; and (iv) the Shipper or Operator has provided Transporter with written notice of its intent to deliver gas pursuant to this exemption.

(c) Transporter may accept any gas that does not meet the specifications set forth in Sections 3.1 or 3.2 of the GT&C on a short-term basis for operational reasons which may include plant start-ups, plant upsets, or line freeze-offs.

3.5 Waiver of Quality Specifications. Transporter, in its reasonable discretion and judgment, exercised on a not unduly discriminatory basis, may waive one or more of its gas quality specifications at any Receipt Point to accept gas that does not conform to the quality specifications set forth in Section 3.1 or 3.2 of the GT&C, if Transporter determines that such acceptance will not interfere with its ability to: (1) maintain an acceptable gas quality in its pipeline through prudent and safe operation of Transporter's pipeline system and any related storage facility;(2) ensure that such gas does not adversely affect Transporter's ability to operate its system and to provide adequate service to its customers consistent with the applicable Rate Schedule and the GT&C; and (3) ensure that such gas does not adversely affect Transporter's ability to deliver gas at its Delivery Points.

3.6 Upon mutual agreement between Transporter and the downstream Interconnect party, Transporter may temporarily deliver gas that does not conform to the quality specifications set forth in Sections 3.1 or 3.2 of the GT&C, if Transporter, in its reasonable operational judgment and in a not unduly discriminatory manner, determines that such delivery will not interfere with its ability to: (1) maintain an acceptable gas quality in its pipeline through prudent and safe operation of Transporter's pipeline system and any related storage facility; (2) ensure that such agreement does not adversely affect Transporter's ability to operate its system and to provide adequate service to its customers consistent with the applicable Rate Schedule and the GT&C; (3) ensure that such agreement does not adversely affect Transporter's ability to deliver gas at its Delivery Points; and (4) ensure that such agreement only affects consenting parties to this Section 3.6. Such agreement shall be made in writing between Transporter and DP Operator and shall be posted on the EBB.

3.7 Failure to Meet Specifications. If, at any time, gas tendered by Shipper for transportation shall fail to conform to any of the applicable quality specifications set forth in Sections 3.1 or 3.2 of the GT&C and Transporter notifies Shipper of such deficiency and Shipper fails to remedy any such deficiency within a reasonable period of time (immediately in those situations which threaten the integrity of Transporter's system), Transporter may, at its option, refuse to accept such gas pending correction of the deficiency by Shipper or, Transporter may continue to accept the receipt of such gas and make such changes as are

3.7 Failure to Meet Specifications (continued)

necessary to cause the gas to conform to such specifications, in which event Shipper shall reimburse Transporter for all reasonable expenses incurred by Transporter in effecting such changes, including operational and gas costs associated with purging and/or venting the pipeline. Failure by Shipper to tender quantities that conform to any of the applicable quality specifications shall not be construed to eliminate, or limit in any manner, the obligations of Shipper existing under any other provisions of the Executed TSA. In the event Natural Gas is delivered into Transporter's system that would cause the Natural Gas in a portion of Transporter's pipeline to become unmerchantable, then Transporter is permitted to act expediently to make the gas merchantable again by any and all reasonable methods, including, without limitation, venting the pipeline of whatever quantity of Natural Gas is necessary to achieve a merchantable stream of gas. Shipper shall reimburse Transporter for all reasonable expenses incurred by Transporter to obtain merchantable Natural Gas again, including operational and gas costs associated with venting the pipeline. In such cases, Transporter shall promptly notify Shipper of the non-conforming supply and any steps taken to protect the merchantability of the gas.

3.8 Gas Quality Monitoring Equipment. After giving sufficient notice to a Shipper, Transporter shall have the right to collect from all Shippers delivering gas to Transporter at a common Receipt Point their volumetric pro rata share of the cost of any additional gas quality equipment including hydrogen sulfide analysis and/or water vapor analysis equipment which Transporter, at its reasonable discretion, determines is required to be installed at such Receipt Point to monitor the quality of gas delivered.

3.9 The quality specifications set forth in Section 3.3 of the GT&C shall not apply to Natural Gas delivered by Transporter at any Delivery Point in production areas receiving gas delivered by Transporter on July 31, 1990 that did not meet the quality specifications set forth in Section 3.3 of the GT&C. Gas so designated shall be of such quality as may exist in the delivering pipeline from time to time at such Delivery Points and Transporter makes no warranty of merchantability or fitness for any purpose with respect to such gas.

3.10 Testing Procedures - The following test procedures shall be utilized by Transporter.

(a) To determine whether specified sulfur compound limitations are being met as stated under Section 3.1(c), 3.2(e) and 3.3(c) hereof, Transporter shall use the appropriate American Society for Testing Materials Procedures (as revised) Volume 05.05 Gaseous Fuels; Coal and Coke and/or accepted industry practices such as sulfur analyzers and chromatographs.

(b) To determine whether specific points on Transporter's system can operate below the fifty degree Fahrenheit (50°F) tolerance as stated in Sections 3.1(i) and 3.3(i) of the GT&C, Transporter shall use the Charpy impact and drop-weight tear tests in accordance with API-5L Supplemental Requirements 5 and 6, respectively. Inasmuch as this test requires the shutdown of the specific segment of the system being tested, Transporter shall conduct such test only at a time when operations on such segments are not affected or the safety of the system is not put in jeopardy.

3.11 Odorization. As between Transporter and Shipper, Transporter shall have no obligation whatsoever to odorize the Natural Gas delivered, nor to maintain any odorant levels in such Natural Gas. Notwithstanding Section 25.1 of the GT&C, Shipper agrees to indemnify and hold harmless Transporter, its officers, agents, employees and contractors against any liability, loss or damage, including litigation expenses, court costs and attorneys' fees, whether or not such liability, loss or damage arises out of any demand, claim, action, cause of action, and/or suit brought by Shipper or by any person, association or entity, public or private, that is not a party to the Executed TSA, where such liability, loss or damage is suffered by Transporter, its officers, agents, employees and/or contractors as a direct or indirect result of any actual or alleged sole or concurrent negligent failure by Transporter or any actual or alleged act or omission of any nature by Shipper to odorize the Natural Gas or product delivered under the Executed TSA or to maintain any odorant levels in such Natural Gas or product.

EXHIBIT H

INSURANCE COVERAGES

A. Worker's Compensation Insurance. To cover obligations imposed by federal and state statutes pertaining to Seller's employees, and Employer's Liability Insurance with a limit of One Million Dollars ($1,000,000).

B. Commercial General Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) per occurrence, or Two Million Dollars ($2,000,000) in the aggregate. This policy shall 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 limit of One Million Dollars ($1,000,000) per accident with respect to Seller's vehicles whether owned, hired, or non-owned.

D. Excess Liability. Excess Liability Insurance 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 Fifteen Million Dollars ($15,000,000).

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 operation, Seller shall provide standard form "All Risk" insurance covering 100% of the project cost.

EXHIBIT I

ADDRESSES FOR NOTICE

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

Delivery Address:

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

Invoices:

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email: PNMEAM@pnmresources.com

Scheduling:

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

Payments:

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z160
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

VALENCIA POWER LLC

All Notices/Invoices:

Delivery Address:

Valencia Power, LLC
600 17th Street, Suite 2400S
Denver, CO 80202
Attn: Valencia Asset Manager

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:

Onward Energy Management
600 17th Street, Suite 24000S
Denver, CO 80202
Attn: General Counsel

with additional electronic copy to:

ryan.keefe@onwardenergy.com
jeffrey.spurgeon@onwardenergy.com

Contract Manager:

Public Service Company of New Mexico
Attention: Eric Meadors
2401 Aztec Rd. NE, MS Z120
Albuquerque, NM 87107
Telephone: (505) 241-2179
Fax: (505) 241-2392

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

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW
Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

With a copy to:

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS 0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

EXHIBIT J

FORM OF GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain Power Purchase Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the

Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

(a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

(b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with *Section 9* below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a limited liability company duly organized and validly existing under the laws of the State of _____ and has the 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 and for the defenses reserved by Guarantor pursuant to Section 4, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

7. REINSTATEMENT. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

8. TERMINATION. Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination. Counterparty agrees to release Guarantor in writing from all obligation under this Guaranty promptly following Obligor's delivery of replacement credit support satisfying the obligations of Obligor to maintain credit support under the Agreement.

9. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

TO GUARANTOR: *	*TO COUNTERPARTY:*
[●]*Attn:* Treasurer	[●]*Attn:*

[Tel: [●] *-- for use in connection with courier deliveries]*	*[Tel:* [●] *-- for use in connection with courier deliveries]*

Any Notice given in accordance with this *Section 9* will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated

hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

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

FORM OF PERFORMANCE BOND

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)

CONSTRUCTION CONTRACT
Date:

Amount: $

Description:
(Name and location)

BOND
Date:
(Not earlier than Construction Contract Date)

Amount: $

Modifications to this Bond: ☐ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature:		Signature:	
Name and Title:		Name and Title:	

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

S-1852/AS 8/10

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

.1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

.2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

.3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
.2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law-bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature: _____		Signature: _____	
Name and Title:		Name and Title:	
Address		Address	

EXHIBIT L

TEST PROTOCOLS AND PROCEDURES

Exhibit M (Test Protocols and Procedures) to the Original PPA, as amended or modified from time to time, is hereby incorporated by reference as a draft version of Exhibit L. The Parties shall cooperate in good faith to mutually agree on a final version of Exhibit L prior to the Delivery Term Start Date. The final Exhibit L that is mutually agreed by the Parties in writing shall thereafter supersede this Exhibit L for all purposes of this PPA.

Sun Lasso Storage ESA

PNM Exhibit GBB-3

Is contained in the following 131 pages.

CONFIDENTIAL

ENERGY STORAGE AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

SUN LASSO ENERGY CENTER LLC

Dated as of October 25, 2024

EXHIBITS

ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (this "ESA"), as may be amended from time to time, is entered into this 25th Day of October, 2024 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Sun Lasso Energy Center LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 11801 Domain Blvd, Suite 450, Austin, TX 78758. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a "**Party**" and collectively as the "Parties."

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

WHEREAS, Seller desires to develop, design, construct, own and operate an energy storage facility, as further defined herein and in Exhibit A; and

WHEREAS, Seller desires to sell and deliver to Buyer the Product (as defined herein) from the Project, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA.

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

"**Actual Charge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual Discharge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual System Latency Delay**" has the meaning set forth in Exhibit F.

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

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

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

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

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

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

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

"**Balancing Area Authority**" 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 (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Buyer in connection with the termination of this ESA, to the extent such costs are not already accounted for under Replacement ESS Costs.

"**Buyer-Requested Performance Tests**" has the meaning set forth in Section 10.5.

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value, plus (c) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. To the extent the total value of the calculation in subpart (b) above is negative, the value used in such subpart (b) will be zero. The Buyer Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages.

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

"**Charging Energy**" means the amount of Energy supplied by Buyer at Buyer's cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured in MWh by the Electric Metering Devices, accounting for estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Commercial Operation**" means that (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the ESS Reliability Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental

Approvals required for Seller to operate the Facility in accordance with Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this ESA; and (h) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

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

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

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

"**Commissioning Performance Test**" means the Initial ESS Unit Capabilities testing detailed in Exhibit F required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

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

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

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

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

"**Contract Value**" means the sum of the present values of the ESS Payments for each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination), which annual amount is equal to (a) the quantity of ESS Capacity expected to be made available during such Commercial Operation Year (or portion thereof) times (b) the ESS Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present

values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

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

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

"**DC**" means direct current.

"**Debt**" means solely with respect to Seller after the Commercial Operation Date, without duplication, (a) all obligations of Seller for borrowed money, (b) all obligations of Seller evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of Seller to pay the deferred purchase price of property or services, except trade accounts payable and other accrued expenses arising in the ordinary course of business, (d) all deferred obligations of Seller to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, line of credit or other instrument, and (e) obligations of Seller in respect of interest rate swap agreements, caps, collars, or other interest rate hedging mechanisms. Provided however, for the avoidance of doubt, Debt shall not include any obligations of Affiliates of the Seller or the Ultimate Parent to any Lender, or any other borrowing obligation by such entity that pledges their direct or indirect ownership interest in Seller as collateral for such obligation.

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

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

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

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

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

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

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

"**Discharge Energy**" means Energy discharged from the ESS and delivered to Buyer at the Point of Delivery, as measured in MWh by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties.

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

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

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

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

"**Downgrade Event**" shall mean that the long-term credit rating of a Person's long-term senior unsecured debt is not "Baa3" 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 as set forth in Appendix A of the Interconnection Agreement.

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

"**Eligible Change in Tariff**" means any duty, tariff, import tax, or other similar import fee or cost that becomes effective after, or the enforcement of which commences after, the Execution Date, or any increase to the applicable rate of any of the foregoing which becomes effective after the Execution Date, to the extent affecting the Energy Storage System. For the avoidance of doubt, the 25% tariff on lithium-ion batteries enacted pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), with an effective date of January 1, 2026, shall not be considered an Eligible Change in Tariff.

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

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer's dispatch instructions and subject to the terms and conditions of this ESA.

"**Energy Storage System**" or "**ESS**" means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's delivery or storage of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other

traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (a) 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 (b) 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, or federal legislation or regulation relevant to the avoidance of any emission described above under any governmental or, regulatory program, 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 (x) Tax Benefits, (y) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (z) 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 Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

"Equivalent Full Cycle" means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total ESS Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

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

"**ESS Capacity**" means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for four (4) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Payment Rate** " means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

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

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Non-Performance Liquidated Damages**" has the meaning set forth in Section 3.13.

"**ESS Operating Restrictions**" means the operating restrictions of the ESS set forth in Exhibit L.

"**ESS Response Delay**" has the meaning set forth in Exhibit F.

"**ESS Response Delay Damages**" has the meaning set forth in Section 3.13(B).

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the ESS Electric Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Unit Capabilities**" has the meaning set forth in Section 3.12.

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

"**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.

"**Frequency Response Capability**" means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy Storage Services provided therefrom are eligible to receive or generate, based on Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date. Future Environmental Attributes are further described in Section 7.3 and Article 11 herein.

"**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 ESA or the procurement pursuant to this ESA of Environmental Attributes 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 with jurisdiction in the United States.

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

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

"**Guaranteed Charge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed Discharge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed ESS Capacity**" has the meaning set forth in Section 3.12 and shall be valid for the full duration of the ESA with no allowance for degradation.

"**Guaranteed ESS Roundtrip Efficiency**" has the meaning set forth in Section 3.12.

"**Guaranteed PMAX**" has the meaning set forth in Section 3.12.

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

"**Guaranteed System Latency**" means the guaranteed time measured between when the control signal is received and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as specified in Section 3.12.

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

Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" means energy consumed by the ESS while the ESS is not charging or discharging as well as energy consumed by ESS ancillaries not directly involved in the control, receipt, storage, or discharge of energy during charging or discharging.

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

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

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

"**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.

"**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 (a) lending money or extending credit (including any financing lease, monetization of tax benefits, construction, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or its Affiliates: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing (including tax equity bridge financing), credit support, credit enhancement or interest rate protection in connection with the Project; (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 that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

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

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

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

"Maximum State of Charge" means the relative SOC above which the battery manufacturer recommends that the ESS system not be charged, expressed in percent of Nameplate Energy Capacity.

"Minimum State of Charge" means the relative SOC below which the battery manufacturer recommends that the ESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

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

"**Monthly Billing Period**" means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.8.

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

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

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

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

"Nameplate Energy Capacity" is the maximum amount of energy in MWh, less auxiliary loads, that the ESS can store at 100% state of charge.

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

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

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

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

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

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

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

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

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

"**Operating Records**" means all operating logs, operating manuals, warranties on equipment, material engineering drawings, environmental permits, plans, and studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

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

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

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

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

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

"**Point of Delivery**" means, unless otherwise modified in accordance with Section 3.11, the electric system point at which (a) Buyer delivers Charging Energy to Seller, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA.

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

"**Product**" means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, all as made available by the Project, all of which shall be delivered for Buyer's exclusive use pursuant to the terms of this ESA.

"**Project**" means Seller's energy storage facility, located on the Site, with a designed maximum power discharge capability of 150 MW for four (4) hours (600 MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller's equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the

construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

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

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

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

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

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

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"**Rating Agency**" shall mean S&P or Moody's.

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

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

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

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator, as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Replacement ESS Costs**" means the actual costs incurred by Buyer following an Event of Default that are reasonable and necessary to replace the Product (based upon similar terms, conditions and performance standards outline in this ESA) which Seller, in accordance with this ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable Product delivered to Buyer's system, as reasonably determined by a third party reasonably acceptable to both Parties. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this ESA.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"**Scheduled Maintenance Outage**" means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this ESA, or as otherwise agreed by Seller and Buyer.

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

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Security**" means Development Security or Delivery Term Security, as applicable.

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

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, (c) any failure by Buyer to perform a material obligation under this ESA (other than due to a breach by Seller of its obligations under this ESA), (d) failure of Buyer to provide Charging Energy, (e) Emergency Condition or (f) Buyer's dispatch of the Project which is not in accordance with the Operating Parameters.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery and not associated with Seller Excused Hours.

"**Seller Guarantor**" means an entity with a long-term senior unsecured debt credit rating of "Baa3" or higher by Moody's or "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 I.

"**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 all or substantially all of the assets of Seller or Seller's Ultimate Parent in a single transaction; *provided* that (in the case of each of (b) or (c)) following such transfer the assignee (A) 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); (B) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (C) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA (or otherwise agrees to maintain the existing Development Security or Delivery Term Security, as applicable, for the Project).

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Product) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or in entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this ESA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this ESA.

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. For the avoidance of doubt, this ESA is Site specific and any relocation of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. For the avoidance of doubt, adding or subtracting contiguous parcels of property will not be deemed a relocation requiring Buyer consent.

"**Supplemental Tax Incentive**" means any federal, state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of the ESS.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits, Supplemental Tax Incentives, and any other tax credits that are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to

and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the tax 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, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

"**Term**" means the period during which this ESA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

"**Transmission Provider**" means the Person, designated agent, or 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'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 Aypa Power I LLC.

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this ESA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this ESA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this ESA, the terms of this ESA shall take precedence.

(D) This ESA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this ESA, and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this ESA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this ESA. Unless expressly provided otherwise in this ESA, (i) where the ESA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the ESA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) Use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(H) All uses of the word "shall" in this ESA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party shall conduct its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this ESA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this ESA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of House Energy, backfeed power or station service power. Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be able to be financially separated from the metering of Charging and Discharging of the ESS.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this ESA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) House Energy, backfeed power, and station service power shall be real time measured by a dedicated electric metering device and shall not be delivered by Seller to Buyer under this ESA.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This ESA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth (20^{th}) Commercial Operation Year, subject to the early termination provisions set forth herein. Applicable provisions of this ESA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms, and as more fully set forth in this ESA, apply to the transaction contemplated by this ESA:

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	**Seller:** Sun Lasso Energy Center LLC
Project: Sun Lasso Energy Center	
Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of "Point of Delivery."	
Contract Term: Twenty (20) Commercial Operation Years	**Product Type:** Bundled Discharge Energy, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services
ESS Payment Rate: $14.55 per MWh	
Day(s) of week: Monday through Sunday, including NERC holidays	**Hours:** Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time ("**MST**")
Guaranteed Start Date: One Hundred Fifty (150) Days after the Expected Commercial Operation Date	
Expected Commercial Operation Date: 1/15/2028	

3.2 Project. Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed material changes in the Project or Project Schedule.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point and the location of the Interconnection Facilities is included in Exhibit A to this ESA. Exhibit A also contains a preliminary indication of the location of the ESS at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS 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 in accordance with Prudent Utility Practices, the Interconnection Agreement, and the terms of this ESA. The Project shall meet or exceed the recommended performance specifications of this Section 3.4.A thru Section 3.4.H, and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 thru Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N – Example Interconnection Metering Diagram from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Discharge Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) receive Charging Energy from Buyer and deliver Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of operation over an ambient temperature range of -20ºF to 110ºF with the full range of relative humidity;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of disconnection remotely by the System Control Center;

(I) meet or exceed the recommended performance specifications of this Section 3.4.I thru Section 3.4.K, and as appropriately defined in IEEE Standard 2800-2022 Sections 5, Section 6 and Section 7 at the Point of Delivery, at all times;

(J) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Sections 5 at the Point of Delivery;

(K) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Sections 7 at the Point of Delivery, which shall be Category II minimum;

(L) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery; and

(M) no later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Sections 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as set forth in this ESA, the Commercial Operation Date shall occur no later than the Guaranteed Start Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis, (a) up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event that delays commencement of operation of the Project , (b) if PNM is the Transmission Provider, on a day-for-day delay up to a maximum of one hundred eighty (180) days in the event of delay associated with the interconnection of the Project (other than work performed by Seller) that delays commencement of the operation of the Project, assuming Seller provides notice to proceed to Transmission Provider within five (5) business days of notice of Conditions Precedent per Section 6.2, and (c) on a day-for-day basis without an aggregate cap for the time period representing Buyer's delay or other failure to perform in a timely manner any of its material obligations under this Agreement which are to be performed prior to the Expected Commercial Operation Date in a manner that delays Seller's ability to achieve Commercial Operation on or before the Expected Commercial Operation Date. Seller shall give written notice to Buyer describing any such delay in accordance with Section 14.2 after becoming aware of any extension of Expected Commercial Operation Date. The number of Days of such extension shall be calculated from the date on which the event begins. If an event will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this ESA without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to (i) Three Hundred Fifty Dollars ($350) per Day per each MW of Delayed Capacity for each Day of delay that occurs prior to June 1 and after September 30 of a calendar year and (ii) One Thousand Dollars ($1,000) per Day per each MW of Delayed Capacity for each Day of delay that occurs on or after June 1 and on or before September 30 of a calendar year, until the earlier of (a) the Commercial Operation Date, and (b) the Guaranteed Start Date. "**Delayed ESS Capacity**" means the Guaranteed ESS Capacity minus the ESS Capacity as of the determination date. Notwithstanding the foregoing, if the Commercial Operation Date has not occurred before the earlier of (i) the Guaranteed Start Date or (ii) the exhaustion of the Development Security, then Seller shall thereafter have the right for thirty (30) days to immediately terminate this Agreement by providing written notice thereof to Buyer, provided however, that in such instance neither Party shall be deemed to be the Defaulting Party and, other than the Delay Damages already incurred, no Buyer Termination Payment shall be due.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of One Million Five Hundred Thousand Dollars ($1,500,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Period. Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generation Operator and will designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M, forty-five (45) Days prior to the beginning of the Test Period. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver (net of losses due to ESS Roundtrip Efficiency) such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharging Energy. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of such Test Period. Scheduling for subsequent deliveries of Discharge Energy shall be as set forth in section 5.1.

3.10 Notice of Commercial Operation. Not less than thirty (30) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such expected Commercial Operation Date; provided that such Commercial

Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied (the "Commercial Operation Notice"). Buyer shall in writing either accept or reject Seller's Commercial Operation Notice within fifteen (15) business days after the date of such Commercial Operation Notice, in its reasonable discretion, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. If Buyer fails to respond to the Commercial Operation Notice within fifteen (15) business days after the date of such Commercial Operation Notice, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) business days the date set forth in the Commercial Operation Notice. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Charging. The ESS shall be configured to charge exclusively using Energy provided by the Buyer from the electrical grid. Seller shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid by the Commercial Operation Date.

3.12 ESS Unit Capabilities. "ESS Unit Capabilities" means all of the following for the ESS, all as measured and determined at the Point of Delivery:

(A) Guaranteed PMAX of 150 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) Guaranteed ESS Capacity: discharge ESS at Guaranteed PMAX for 4 (600 MWh) consecutive hours; starting at the Maximum State of Charge and ending at the Minimum State of Charge

(C) Guaranteed ESS Roundtrip Efficiency as shown in Exhibit K; Seller shall provide any applicable degradation forecasts applicable to this guarantee;

(D) Guaranteed Discharge Ramp Rate of Guaranteed PMAX per second measured between 90% state of charge and 10% state of charge representing the maximum rate that the ESS can change its output power;

(E) Guaranteed Charge Ramp Rate of Guaranteed PMAX per second measured between 10% state of charge to 90% state of charge representing the maximum rate that the ESS can change its input power;

(F) Guaranteed System Latency: <1 second

(G) Guaranteed Frequency Response Capability of Guaranteed PMAX/0.1Hz;

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5(D). Seller will pay Buyer the following liquidated damages ("**ESS Non-Performance Liquidated Damages**") as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, or (b) failure of Buyer to deliver Charging Energy) or to comply with the requirements of Section 7.4(a).

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Forty Thousand Dollars ($140,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured; and

(B) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, or Guaranteed System Latency during ESS Unit Capabilities Testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. In the event that the ESS fails to meet the Guaranteed Frequency Response Capability, Seller shall pay to Buyer an amount equal to ten thousand dollars ($10,000) per event of failure; provided, however, under no circumstances will ESS Non-Performance Liquidated Damages exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay ESS Availability Damages as defined in Exhibit H, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

3.15 Guaranteed ESS Roundtrip Efficiency Payment. If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to $100/MWh * Guaranteed PMAX * 4 hours * (1 - ESS Roundtrip Efficiency/Guaranteed ESS Roundtrip Efficiency).

3.16 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof supplied to Buyer under this ESA is not prohibited by Applicable Law. Any breach of this Section 3.16 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.16 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.17 Eligible Change in Tariff. Notwithstanding any other provision of this ESA, to the extent an Eligible Change in Tariff occurs after the Execution Date that increases Seller's costs that could reasonably have been contemplated as of the Execution Date to take all actions to comply with Seller's obligations under this ESA by more than one and one half percent (1.5%) of the Contract Value at Contract execution, the Parties shall use good faith, commercially reasonable efforts to agree upon an equitable increase to the ESS Payment and if the Parties cannot agree upon any such increase to the ESS Payment within thirty (30) days following Buyer's receipt of Seller's notice despite using good faith, commercially reasonable efforts, Seller shall have the right to terminate this Agreement upon notice to Buyer unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security and Delivery Term Security, as applicable, to Seller within fifteen (15) days after such termination.

ARTICLE 4
AGC

4.1 AGC.

(A) Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability. Total cycles shall not exceed three hundred sixty-five (365) Equivalent Full Cycles in any Commercial Operation Year. Notwithstanding anything in this ESA to the contrary, Seller will have no obligation to dispatch the ESS in response to any dispatch instructions provided by PNM that are not in accordance with the Operating Parameters, and the time period during which non-conforming instructions are given will be considered Seller Excused Hours.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms

and conditions of this ESA. Seller shall secure transmission necessary (i) to deliver the Discharge Energy to the Point of Delivery, and (ii) receive Charging Energy from the grid at the Point of Delivery to the ESS, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project.

(B) Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy at the Point of Delivery for the Project at the required voltage, including the costs of any associated network upgrades. As between Buyer and Seller under this ESA, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges required to deliver Discharge Energy from and beyond the Point of Delivery. Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) to deliver Charging Energy to the Point of Delivery including for the avoidance of doubt during the Test Period.

(E) Seller shall provide to Buyer a finalized one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to provide this information to Buyer in a timely manner.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers ("CTs") and potential transformers ("PTs") ("Back-Up Metering"), each in an arrangement consistent with the configuration depicted in Exhibit N, or as otherwise agreed between the Parties.

(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 Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this ESA. The design of the Electric Metering Device system shall be subject to Buyer approval, not to be unreasonably withheld, prior to commencement of construction of the Project. Buyer will, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. ESS Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous, five minute, fifteen minute and hourly real and reactive Energy and capacity, if supplied by either the grid or ESS system. ESS Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Buyer.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party shall, at its own expense, inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Secondary Metering, fails to register, or if the measurement made by an Electric Metering Device, or Secondary Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, followed by Secondary Metering to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

ARTICLE 6
Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this ESA are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

(B) Receipt of approval of the Boards of Directors of Buyer and its parent company, no later than NMPRC Approval.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

ARTICLE 7
Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through

the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Party's performance is excused by a Force Majeure Event; (b) a Seller Forced Outage is continuing; (c) a Seller Scheduled Maintenance Outage is continuing; or (d) Seller fails to perform and its failure is excused during Seller Excused Hours. At its sole discretion and cost, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will, at its sole cost, have exclusive rights to offer, bid, or otherwise submit the Product for resale in the market and retain and receive any and all related revenues. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this ESA. During the Term, Buyer shall assume all duties as the scheduling coordinator (or equivalent) in any market in which the Project participates or in which the Product is submitted (including the Western Energy Imbalance Market (EIM)), and Buyer shall be responsible for all costs, fees and charges associated with such participation with the exception of fees or penalties resulting from Seller's breach of this ESA.

7.2 Title and Risk of Loss. Buyer shall be deemed to be in control of all Charging Energy up to delivery, but not including receipt at the Point of Delivery. Seller shall be deemed to be in control of such Charging Energy from and after such delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy up to the Point of Delivery. Buyer shall be deemed to be in control of such Discharge Energy from and after Seller's delivery and upon Buyer's receipt at the Point of Delivery. Buyer shall retain title and risk of loss for Charging Energy, Energy stored in the ESS, and Discharge Energy at all times. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery unless otherwise provided in Section 11.1.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such Future Environmental Attributes is included in the ESS Payment Rate ; and (c) such Future Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this ESA. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, or if any change in 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 ESA in order to deliver the Future Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. 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 Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Discharge Energy and Charging Energy in accordance with NERC/WECC operating polices and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point or Buyer no longer reside in the same market ((i) and (ii) a "Market Event") and such Market Event materially changes the interconnection and delivery requirements in this ESA or has a material adverse effect on either Party, the Parties shall negotiate in good faith amendments to this Agreement to facilitate the delivery of Product from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this ESA to the extent possible.

(C) Seller shall provide to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly ESS availability for the next six (6) Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, 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 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 Seller Excused Hours or a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the 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 Product, 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 material developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current

Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

ARTICLE 8
Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Payment. Subject to Section 14.4, Buyer shall pay Seller an amount equal to the product of the (i) ESS Capacity, not to exceed the Guaranteed ESS Capacity, multiplied by the (ii) ESS Payment Rate, multiplied by (iii) Monthly ESS Availability, and multiplied by (iv) the Monthly Hours (the "**ESS Payment**").

Example: For a 30-day month, assuming 98% availability

$$Monthly\ ESS\ Payment\ = 150\ MW\ \times 30\ days\ \times 24\ hours\ \times \$14.55/MWh\ \times 0.98$$

(B) If Supplemental Tax Incentives become available in connection with the Product, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this ESA. At Buyer's option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this ESA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such incentives.

(C) In the event that Seller, an Affiliate of Seller or a Tax Equity Investor, if any, realizes any Supplemental Tax Incentives with respect to the Project, the value of such Supplemental Tax Incentives actually realized will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental Tax Incentives by Seller, Affiliate of Seller, or Tax Equity Investor, Seller will remit to Buyer a payment equal to fifty percent (50%) of the realized value of such Supplemental Tax Incentives.

(D) Buyer shall reimburse Seller for the taxes identified in Section 9.7(A), which shall be included in the monthly invoices in compliance with Section 9.7(A).

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this ESA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(B) to the extent such Supplemental Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this ESA.

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 3.15. From and after the Commercial Operation Date, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show the ESS Payment, information and calculations, in reasonable detail.

(D) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If 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.

(F) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this ESA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. Notwithstanding anything contained in this ESA, all payments to be made by either Seller or Buyer under this ESA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this ESA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the "prime" rate as published in *The Wall Street Journal* on the first business Day of each Month plus one-half percent (0.5%) ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes charged to Buyer provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with applicable state and tribal laws governing the reporting and payment of Gross Receipts Taxes on those transactions. Buyer shall reimburse Seller for any Gross Receipts Taxes, if any, imposed on Seller's sale of and Buyer's purchase of Product and on Buyer's payment and Seller's receipt of amounts due under this ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this ESA.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this ESA and implement the provisions in this ESA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, copies of any documentation respecting this ESA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this ESA, including Section 9.9 below, all payments between the Parties under this ESA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this ESA, including damages and other payments that are owed by a Party to the other Party pursuant to this ESA. Undisputed and non-offset portions of amounts invoiced under this ESA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this ESA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller

to the other are equal on a current accounting basis, neither shall be required to make payment under this ESA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement and this ESA. Seller will be solely responsible for obtaining Tax Benefits, and the ESS Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule in Microsoft Project format within thirty (30) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a 1 Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-23-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by Section 62-23-16 of the New Mexico Public Utility Act. If Seller becomes aware of any critical milestone that will not be achieved by the required date, no later than ten (10) Business Days following the originally scheduled date, Seller must provide Buyer written notice and a recovery plan to achieve such milestone and to minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the

commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date), a Project Manager reasonably acceptable to Buyer 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 ESA and any documents ancillary hereto, neither this ESA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith, including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this Agreement with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Such Commissioning Test procedures shall meet or exceed the operability performance requirements defined in IEEE Standard 2800-2022 Sections 4. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least thirty (30) Days' prior notice of the approximate test date and ten (10) Days' prior notice of the Commissioning Tests. Representatives of Buyer

shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with twenty-four (24) hours advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this ESA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this ESA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA; and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five minute and real time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Discharge Energy delivered by Seller will meet operability performance requirements defined in IEEE Standard 2800-2022, Sections 5 through 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all real time measurement parameters of the Project including individual inverter and system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Sections 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers requirements and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with a ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures.

(A) Seller shall provide Buyer a draft of all Operating Procedures and collaborate with Buyer to finalize mutually agreeable, written Operating Procedures within the timeline defined in Table 2 of Exhibit O. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must operate, maintain and control the Project at all times consistent with the Operating Procedures, the ESA, Prudent Utility Practices, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

(B) Seller will prepare detailed test protocols and procedures for all of the Commissioning Tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be unreasonably denied or delayed.

(C) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and provide the results to Buyer. Seller will have sixty (60) Days from the test date to cure any deficiencies in the test.

(D) In the event of a material adverse change in ESS Unit Capabilities, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the following conditions. Buyer-Requested Performance Tests will be conducted in a manner consistent with the annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F.

(1) If the results of a Buyer-Requested Performance Test fail to meet the Guaranteed ESS Unit Capabilities, ESS Non-Performance Liquidated Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(2) Only two (2) Buyer-Requested Performance Tests may be requested per Commercial Operation Year.

(3) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following Commercial Operation Year. Should Buyer desire to change the reporting dates noted above as a result of Buyer's participation in a regional market or program (including the Western Resource Adequacy Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

With the November 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each Scheduled Maintenance Outage for the Commercial Operation Year will be subject to reasonable approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller

must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(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 Product to the Point of Delivery. Upon the written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("Monthly Operational Report") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 Lease Liability Operational Expenses. If the pricing terms and conditions of this ESA would result in Buyer incurring a lease liability greater than zero dollars ($0), then Seller shall provide Buyer, upon Buyer's reasonable request, an approximate percentage, or other information necessary for Buyer to determine an approximate percentage, of the cost of on-going operational expenses for the Project (e.g. cellular augmentation, operations and maintenance costs, property taxes and other such expenses) relative to the ESS Payment Rate for a specified measuring period.

ARTICLE 11
Future Environmental Attributes

11.1 Sale of Future Environmental Attributes. This Article 11 shall apply if and only if Future Environmental Attributes become available.

(A) Other than as specified in Sections 11.1(D) and 11.1(E) below, effective from the date on which the Project first makes Product available to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer

no later than five (5) Business Days after the Future Environmental Attributes are available to be transferred in the respective attribute tracking system. The value of the Future Environmental Attributes transferred under this ESA shall be included in the ESS Payment Rate only if Seller is not required to incur additional third-party costs as provided in Section 7.3. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, or if any change in Applicable Law 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 ESA 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 consistent with Section 7.3.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the Future Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Future Environmental Attributes shall include any Future Environmental Attributes that are reserved or "banked" throughout the Term of this ESA, but not used, sold, assigned or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this ESA or any successor provision providing for a federal, state and/or local tax credit or financial benefit determined by reference to renewable electric energy produced from renewable energy resources or the storage of electrical energy shall be owned by Seller.

(E) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to Future Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

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 in Section 12.1(A)(6) and 12.1(A)(7) below:

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this ESA (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 a 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's voluntarily taking advantage of any such law by answer or otherwise;

(4) Except during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other misconduct in connection with this ESA or the operation of the Project;

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

(7) The failure of Seller Guarantor or Seller to make, when due, any payment due to Buyer under or in connection with this ESA, or the failure of any Seller Guarantor to meet the criteria as set forth in the definition of Seller Guarantor if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this ESA); or

(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, except as may be extended pursuant to Section 3.6.

(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 or from a Force Majeure Event, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including, but not limited to, the Interconnection Agreement) required to make Product available at the Point of Delivery;

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

(4) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty-five percent (85%) over any twenty-four (24) consecutive Months during the Term excepting to the extent due to the failure of a main generator step-up transformer (which exception may apply only once during the

Term), provided that the 30-Day cure period indicated in Section 12.1(B) does not apply and Seller remediates the cause of the shortfall of Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the eighty-five percent (85%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of a main generator step-up transformer failure of the steps that Seller is taking to remediate the failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving such main generator step-up transformer failure;

(5) Subject to Section 7.3, Seller fails to timely register the Project or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this ESA; or

(6) The Project fails, after the Commercial Operation Date, to achieve ninety percent (90%) of Guaranteed ESS Capacity referenced in Section 3.12, during annual testing pursuant to Section 10.5(C), provided that in no case shall tests be performed when major equipment is not operational.

(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 ESA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18;

(2) Any representation or warranty made by Seller in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on 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 ESA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant Article 18; 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 ESA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within 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 ESA or the operation of the Project; or

(2) Buyer's failure to comply with any other material obligation under this ESA, 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 ESA, except as permitted in accordance with Article 18; or

(3) Any representation or warranty made by Buyer in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an uncured Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this ESA from the Defaulting Party as set forth in Section 12.3(B); (ii) exercise its rights pursuant to Section 12.5; (iii)

suspend performance; (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security; and (v) exercise its rights to terminate this ESA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, 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 ESA 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 ESS Costs minus the product of (x) the quantity of Product so replaced (calculated as ESS Capacity multiplied by Guaranteed ESS Availability multiplied by remaining months in the Term), and (y) the ESS 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 Product notwithstanding the availability or prices of electric energy and capacity 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 Future Environmental Attributes that are currently available pursuant to this ESA as of the date of termination of this ESA. 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 Future Environmental Attributes pursuant to this ESA, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which may include Future 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 Product produced by Seller following such Event of Default, plus, to the extent that Seller is unable to produce Product due to the Event of Default of Buyer, an additional quantity equal to the amount of Product that would have been produced by Seller absent such Event of Default of Buyer, each multiplied by the ESS 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 Product 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 uncured 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 ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the

limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of any actual or threatened breach of any material performance obligation of the other Party under this ESA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this ESA shall be cumulative of and shall be in addition to every other right or remedy provided for in this ESA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy

or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, either Party may send the other Party an invoice for such damages or other amounts as are due to the Party providing the invoice at such time from the other Party under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this ESA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default 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 ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 13
Contract Administration and Notices

13.1 Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered, mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this ESA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this ESA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this ESA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records), but in all cases excluding contracts, agreements, and any confidential or proprietary information unless such disclosure is required by Governmental Authority and subject to the provisions of Section 22.14. All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than three (3) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, dispatch and scheduled Discharge Energy delivered, Charging Energy received, and House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages, but in all cases excluding contracts, agreements, and any confidential or proprietary information unless such disclosure is required by Governmental Authority and subject to the provisions of Section 22.14 ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) quarterly construction progress reports until the start of construction and monthly thereafter in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B); and (ii) reports of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this ESA; and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this ESA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, but not earlier than forty-five (45) days following the Commercial Operations Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; or (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this ESA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless Seller has defaulted under this ESA, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice

and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this ESA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this ESA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

ARTICLE 14
Force Majeure

14.1 Definition.

(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 Execution Date that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism),

epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). The Parties agree that a pandemic, including COVID-19, shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this Agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. Notwithstanding any other provision in this ESA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of three hundred sixty five (365) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this ESA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this ESA (including payment obligations) to the extent that 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 ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event prevents the ability of either Buyer or the Transmission Provider to accept Discharge Energy from the Project or to deliver Charging Energy to the Project or otherwise prevents the ability of the ESS to deliver Product, then the hours during which the Force Majeure Event occurs shall be excluded from the payment calculations as set forth in Section 8.1.

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents 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 ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Seller have been duly authorized by all necessary company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this ESA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA.

(C) The obligations of Seller under this ESA are valid and binding obligations of Seller.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term that are applicable to Seller's obligations under this Agreement.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any material 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) Subject to Section 7.3, Seller will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

(J) Subject to Section 7.3, Seller has not sold, delivered or transferred the Future Environmental Attributes to any other Person, in whole or in part.

(K) Subject to Section 7.3, all right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(L) Subject to Section 7.3, each Future Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 et seq., and Title 17.9.572 NMAC.

(M) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(N) Except as expressly set forth in this ESA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(O) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this ESA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA.

(C) Assuming this ESA is a valid and binding obligation of Seller, this ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

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 ESA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this ESA shall cover occurrences during the Term of this ESA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this ESA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer and its Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this ESA is primary and non-contributory with respect to other insurance carried by Buyer.

(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. Seller shall at all times comply in all material respects with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the ESA. Seller shall give all required notices, shall timely procure and maintain all Seller

required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this ESA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval in connection with (i) the execution and performance of this ESA, including authorization to recover the costs of ESS Payments; and (ii) any waivers as set forth in Buyer's request for approval of this ESA (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to a motion for rehearing or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller 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 ESA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties 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 ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA. If the Parties are unable to mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate ten (10) Days after the date on which the parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(3) If the NMPRC, for any reason, has not issued NMPRC Approval for all Requested Actions by September 1, 2025 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

ARTICLE 18
Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this ESA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this ESA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this ESA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA.

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this ESA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this ESA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this ESA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this ESA with the Affiliate as if such Person had been named under this ESA; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this ESA made without fulfilling the requirements of this ESA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this ESA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. To facilitate Seller's obtaining of financing in connection with the Project, 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, and, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form reasonably 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 ESA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this ESA 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 ESA or provide any consent or enter into any agreement that has a material adverse effect on Buyer, 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 ESA.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this ESA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this ESA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this ESA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed Capacity ("**Development Security"**) within the earlier of (a) ninety (90) Days after the Execution Date and (b) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed Capacity (the "**Delivery Term Security**"). Seller shall replenish the 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 under this ESA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the earlier of (x) the fifteenth (15^{th}) Business Day after termination of this ESA in accordance with its terms; and (y) on the fifteenth (15^{th}) 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 Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor, 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 five (5) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this ESA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this ESA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this ESA. Buyer may draw from, offset against

or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of the ESA, 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 to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the

foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

ARTICLE 21
Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer the Product that are imposed prior to the Point of Delivery or prior to the transfer of the Future Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of the Product that are imposed at and from the taking of the Product by Buyer at the Point of Delivery or at and after the transfer of the Future Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22
Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this ESA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Rate Changes. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this ESA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this ESA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this ESA.

22.5 Relationship of the Parties.

(A) This ESA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform services for Seller, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this ESA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this ESA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the ESA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this ESA with a view toward effecting the purposes of this ESA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this ESA constitute the entire agreement between Buyer and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to approval by any Governmental Authority with jurisdiction over this ESA, this ESA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This ESA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this ESA are for ease of reference only and do not constitute a part of this ESA.

22.12 Counterparts. This ESA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this ESA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this ESA shall be brought in the United States District Court for the District of New Mexico.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "Disclosing Party" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, technical advisors, contractors, consultants, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care).

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this ESA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Buyer or on Buyer's behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the

Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this ESA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this ESA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this ESA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this ESA that relates solely to this ESA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this ESA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information to make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall notify Buyer as soon as reasonably practicable of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("Data Breach") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental

Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access. Buyer shall have the right to advertise, market, and promote to the general public the benefits of this ESA, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA (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 make available to Buyer a basic description of the Project and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this ESA and any such mortgage, security interest or conveyance shall not affect any of Seller's or its Affiliates' financing arrangements or rights or obligations thereunder. 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. Buyer agrees to reimburse Seller for any material costs incurs related to this Section 22.16.

22.17 Forward Contract and Master Netting Agreement. Notwithstanding any other provision of this ESA, the Parties acknowledge that this ESA 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 ESA, that this ESA 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 ESA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the ESA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing

determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the 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 Buyers external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section 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 that, based on the advice of its counsel, is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

22.19 Telephone Recording. Each Party to this ESA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this ESA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Change in Market Structure. In the event of a change in the operation or organizational structure of the regional territory which includes the ESS or Buyer's service area (including change in balancing area authority or implementation of an independent system operator, regional transmission organization, or realignment of the transmission system) and such change is reasonably anticipated to affect materially and adversely either Party's ability to perform its obligations hereunder, the representatives of each Party shall convene within fifteen (15) days of written notification from either Party and shall provide recommendations for the Parties' appropriate action. Both Parties thereafter shall negotiate in good faith an amendment to this ESA or take other appropriate actions, the effect of which will be to preserve or restore the respective Parties, as closely as possible, to the same business and economic positions that existed prior to such change.

[Signature page(s) follow]

IN WITNESS WHEREOF, the Parties have caused this ESA to be duly executed as of the date first above written. This ESA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Michael Mertz 8DE1D44E9B1C4ED...

Name Michael Mertz

Title SVP PNM Operations

SUN LASSO ENERGY CENTER LLC

By Signed by: Daniel Santelli A816A04FF8CC441...

Name Daniel Santelli

Title Chief Commercial Officer

EXHIBIT A
(to Energy Storage Agreement)

DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE

1. Name of Seller's Project: Sun Lasso Energy Center

   Location: 10100 Central Ave. SW, Albuquerque, NM 87121 (approximately)

2. Owner (if different from Seller):

3. Operator: Aypa or its designee

4. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage

   b. Total number of units at the Project: approximately 172 battery units

   c. Total nameplate capacity (AC): 150 MW

   d. Total capacity at point of delivery: 150 MW

   e. Additional technology-specific information:

5. Project Schedule:

Key Milestone	Date
LGIA Execution	3/1/2025
Major Equipment Supply Agreements Executed	12/1/2026
Discretionary Permits	6/1/2026
Close Financing	1/31/2027
30% Design Complete	10/15/2026
Start of Project Construction	2/15/2027
First Major Equipment Delivered to Site	8/1/2027
Interconnection In-Service Date	7/1/2027
Commissioning Start Date	10/15/2027
Expected Commercial Operation	1/15/2028
Guaranteed Start Date	6/13/2028

6. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the Energy Storage Agreement.

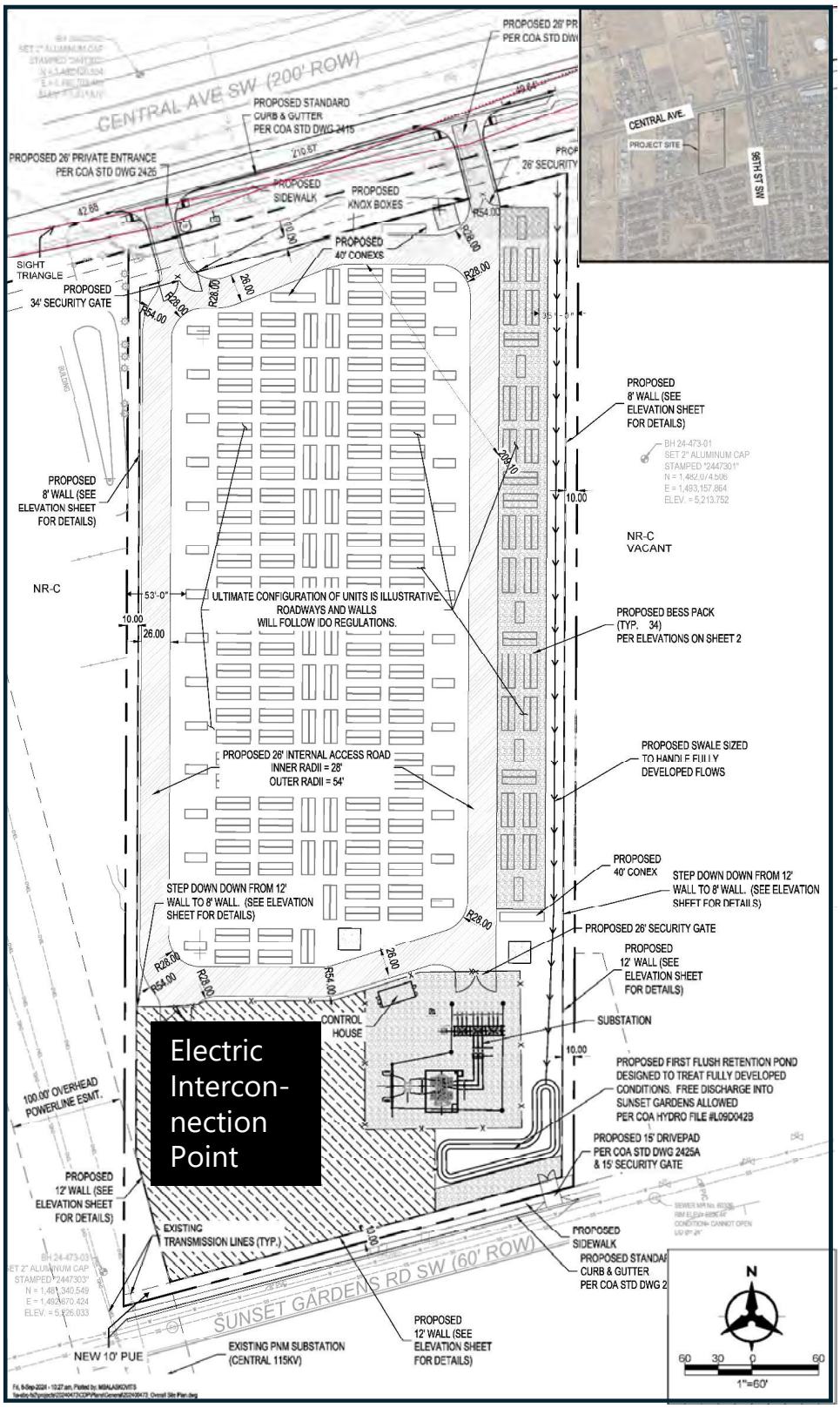


EXHIBIT B
(to Energy Storage Agreement)

ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

1. See attached one-line diagram and communications and telemetry diagram of the Project. The diagrams indicate the following:

   - Interconnection Facilities;
   - the network upgrades;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
   - communications and telemetry configuration with associated redundancy;
   - the House Energy power source and associated dedicated electric meter; and
   - redundancy, ownership, and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is the new Sunset Gardens 115 kV Station.

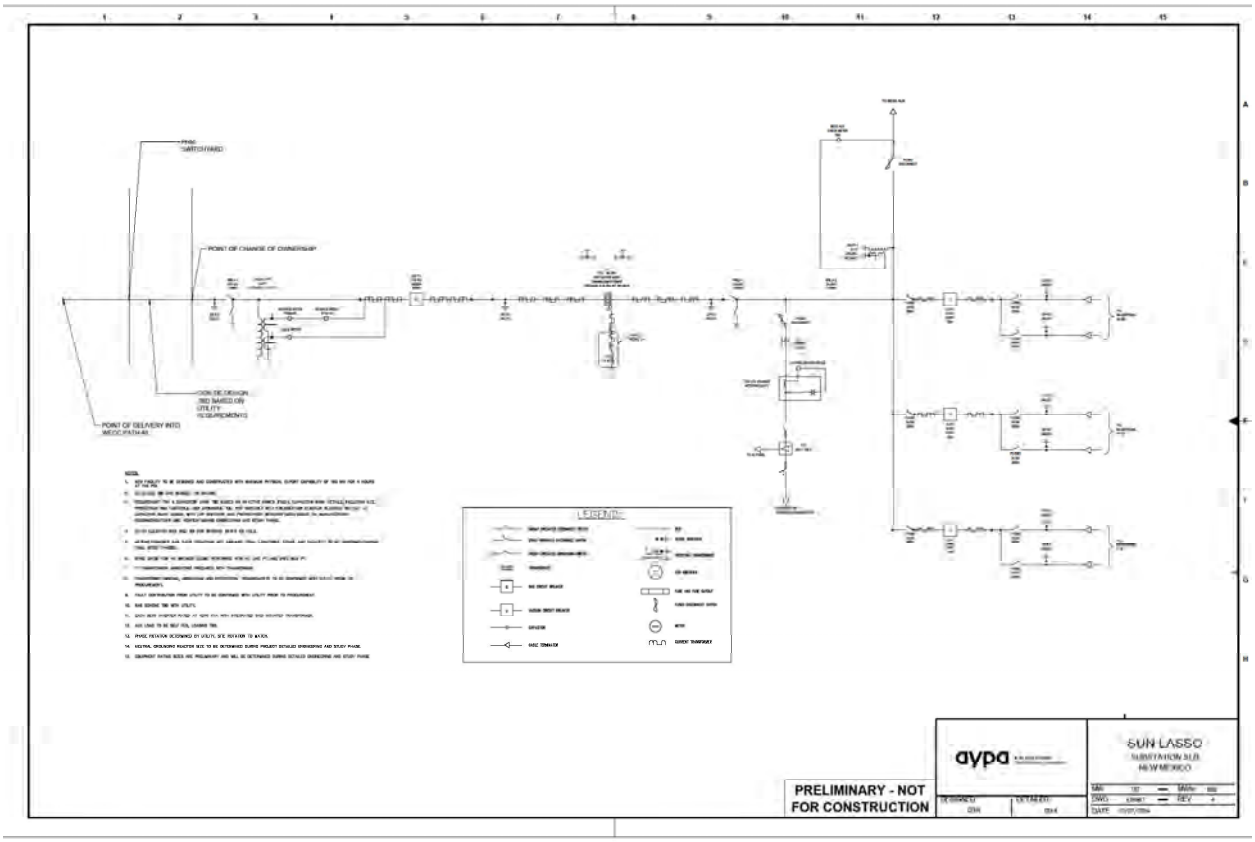

POINT OF CHANGE OF OWNERSHIP
POINT OF DELIVERY INTO TRANSMISSION
LEGEND
PRELIMINARY - NOT FOR CONSTRUCTION
SUN LASSO

EXHIBIT C
(to Energy Storage Agreement)

DESCRIPTION OF SITE
PARCEL SURVEY FOR
SUN LASSO ENERGY CENTER PROJECT

LOTS 3 AND 4, BLOCK 1, LANDS OF THE ATRISCO GRANT PROJECTED SECTIONS 28 AND 29, TOWNSHIP 10 NORTH, RANGE 2 EAST, N.M.P.M. CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO

EXHIBIT D
(to Energy Storage Agreement)
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:
Delivery Address:
Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

Invoices:
Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email: PNMEAM@pnmresources.com

Scheduling:
Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z160
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

SUN LASSO ENERGY CENTER LLC

All Notices/Invoices:
Delivery Address:
Sun Lasso Energy Center LLC
11801 Domain Blvd, Suite 450
Austin, TX 78758
Attn: Tim Fagan
Phone: (201) 669 – 9942
Email: tfagan@aypa.com

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: General Counsel
Address: 11801 Domain Blvd, Suite 450
Austin, TX 78758
Phone: (416) 779 – 6681
Email: legal@aypa.com

Contract Manager:

Public Service Company of New Mexico
Attention: Eric Meadors
2401 Aztec Rd. NE, MS Z120
Albuquerque, NM 87107
Telephone: (505) 241-2179
Fax: (505) 241-2392

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

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW
Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

With a copy to:

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS 0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

EXHIBIT E
(to Energy Storage Agreement)

SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

FEDERAL

- NEPA: None; there is no federal nexus.
- Waters/Wetlands: None; no waters or wetlands present, per USACE Approved Jurisdictional Determination dated August 30, 2024

STATE

- State Location Permit and Certificate of Public Convenience and Necessity (CPCN) is not necessary for the battery project. The NM Public Regulation Commission must approve a Location Permit for any power generation plant with capacity of 300 MW or greater and any associated transmission lines, or for any other transmission lines of 230 kV capacity or greater. The Project is not a generator, falls below the MW threshold, and would utilize a 115kV gen-tie line so is not expected to need approval by the NMPRC.

- Transportation: no state-managed roads involved in project; permits limited to oversized load movements during construction.

Other

- The Project site is located in the City of Albuquerque's NR-LM zone, within which battery energy storage facilities are a permissive primary activity use. Electric Utility are also a primary permissive use. The zoning for the project site was approved February 15, 2024.

- The City's Development Facilitation Team ("DFT") reviews and approves site plans. On September 26, 2024 the DFT administratively approved a site plan for the battery project with conditions.

- Note that PNM Transmission's addition of the Sunset Gardens substation to the southwest corner of the project site will involve a site plan amendment and may necessitate inclusion into the regional Facility Plan for Electric System Transmission and Generation.

- Archaeological Certificate of No Effect – the site has been analyzed by the City of Albuquerque staff archaeologist who signed a Certificate of No Effect

- Construction Permits available through the City of Albuquerque include:
  - Grading and Paving Permit
  - Plumbing, Mechanical, and Electrical Permits
  - Foundation Only Permits
  - Sign Permits
  - Wall, Fence, and Retaining Wall Permits
  - Encroachment Permit
  - Excavation Permit
  - Oversize/Overweight Truckload Permit
  - Sewer Tap Permit
  - Public Sidewalk, Drive Pad, Curb and Gutter, Water, and Fire Line within Right of Way (Public Infrastructure Improvement Permit)
  - Stormwater Control Permit for Erosion and Sediment Control (and NPDES construction permit)
  - Fugitive Dust Permit

NOTE: Final actual permit requirements may vary from the above listings due to Code and Regulatory requirements as needed for project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of the Agreement.

EXHIBIT F
(to Energy Storage Agreement)

COMMISSIONING AND ANNUAL TESTS

All tests described in this Exhibit F will be conducted in accordance with equipment manufacturers' recommendations and current test procedures, including performance adjustments based upon ambient conditions. ESS Reliability Testing and Operational Reliability Testing may be run simultaneously.

Commissioning Tests

A. SCADA Functionality Test (or equivalent)
B. Automatic Generation Control (AGC) Functionality Test (or equivalent)
C. Voltage Setpoint Functionality Test
D. Historian and Data Link Functionality Tests
E. ESS Reliability Tests

Commissioning and Annual Performance Tests

A. ESS Unit Capabilities Tests, including:
    - ESS Capacity Test including ESS Roundtrip Efficiency Determination
    - ESS Response Delay Test
    - Frequency Response Capability Test

Commissioning Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

A. SCADA Functionality Test

Purpose:
This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering (POE). This test must be performed prior to energization of the Energy Storage System (ESS).

Procedure:
Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall then contact Buyer's POE Team 4-6 weeks in advance to submit a database modification request (DBMOD) and request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. Testing phases 1-3 (below) require only POE contacts, but phase 4 will also require Buyer's Operator support.

The test shall include, but is not limited to, the following verification:

1) Status points
   - Verify POE is receiving the intended state of Seller's switches and breakers
   - Verify POE can see and change the value of states of Seller's switches and breakers
   - Verify the functionality of the local/remote mode indication status

2) Analog points
   - Verify POE is receiving the intended value
   - Verify POE receives a changed value
   - Verify values have the correct scaling

3) Accumulator points (as applicable)
   - Verify POE is receiving an inserted value
   - Seller reverts to original value then verifies POE receives the new value
   - Verify values have the correct scaling

4) Control points (as applicable)
   - Verify the functionality of all breakers to be controlled by Buyer's POE
   - Verify the functionality of all switches to be controlled by Buyer's POE
   - Verify POE can control all reclosers
   - Verify on-site personnel have capability of changing states and values
   - Verify the functionality of all Setpoints
   - Verify the functionality of all feedback points

Completion of this test will be acknowledged verbally between Buyer's personnel and the stakeholders involved and confirmed thereafter in writing (email is acceptable). This test must be repeated for changes to the states table(s) and/or list of points.

B. Automatic Generation Control (AGC) Functionality Test

Purpose:
This test will demonstrate the ability of the ESS to synch to AGC. This test will occur after the ESS system has energized.

System starting state:
The ESS will be in the on-line state with a SOC between 30% and 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("**EMS**") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure:
Prior to testing, the Seller (or its representative) shall contact Buyer's POE Team 4-6 weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or its representative shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour Operational activities.

Remote Mode Testing

Seller will set the ESS to REMOTE mode, and verify the unit accepts AGC.

- Operator will send a setpoint to the unit
- Validate the ESS unit responds to the setpoint
- Operator will send a setpoint above and/or below ESS operation limits
    - Validate the ESS sends alarms
    - Validate the ESS unit does not attempt to charge/discharge to the value sent

Buyer's Operator will set the AGC Control mode to MARKET:
- Validate the ESS unit responds to a DOT from CAISO

Buyer's Operator change the ESS to MARKET in AGC
- Validate the ESS unit changes the control mode
- Validate the ESS unit follows gross MW requested in Planner Pro

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG
- Hold for up to 10 minutes
- Validate the ESS unit responds to ACE of +/- 10 MW

Local Mode Testing
On-site personnel change the ESS to LOCAL mode
- Validate the ESS unit changes from REMOTE to LOCAL mode
- Validate the ESS unit follows gross MW requested on-site
- Validate the ESS unit does not respond to setpoint changes

System end state:
The ESS will be in the on-line state and with control mode set to LOCAL.

C. Voltage Setpoint Functionality Test

[*Test procedures to be agreed upon at a later date, consistent with the timeline set forth in Section 10.2 of the ESA and ESS manufacturer's then-current operating and testing requirements*]

D. Historian Data Link Functionality Test

The Historian Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for ESS control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party) and assist as necessary to set up the Historian Data Link.

Seller shall prepare and submit to Buyer a Historian Data Link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Historian Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Historian Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

E. ESS Reliability Testing

E.1 Cycling Reliability

A. Purpose of Test

To demonstrate the ability of the ESS to reliably perform full charging and discharging cycles.

B. Test Procedure

The cycling reliability test shall include the following test elements:

1. the discharging of the ESS from 100% of the Maximum State of Charge to 0% of the Maximum State of Charge followed by;
2. following a prescribed period of "rest" per the OEM guidelines, the charging of the ESS from 0% of the Maximum State of Charge to 100% of the Maximum State of Charge.

C. Test Results

The cycling reliability test shall be satisfied when the ESS successfully performs three (3) full charge and discharge cycles with the ESS control system in auto without any alarms

that indicate an adverse condition that impacts system operations below operating specifications/nameplate, faults, trips, or manual intervention required.

E.2 Operational Reliability

A. Purpose of Test

To demonstrate the short-term reliability of the ESS.

B. Test Procedure

The ESS shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the ESS remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any alarms, faults, trips, or manual intervention required.

Commissioning and Annual Performance Tests

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the ESA) throughout the term of the ESA.

F. ESS Unit Capabilities Testing

F.1 ESS CAPACITY TEST

F.1.1 General

The ESS Capacity Test ("**ESS Capacity Test**" or "**ECT**") is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

F.1.2 Requirements Applicable to all ESS Capacity Tests

A. Purpose of Test. Each ECT shall:

(1) verify compliance with the Guaranteed ESS Capacity;

(2) determine the Roundtrip Efficiency (RTE) of the ESS;

B. Parameters. During each ECT, the following parameters shall be measured and

recorded simultaneously for the ESS:

(1) discharge time (minutes);

(2) ESS Charging Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy In");

(3) ESS Discharge Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy Out");

(4) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to the Point of Delivery, in MWh ("Point of Delivery Energy Out");

(5) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh ("Point of Delivery Energy In");

C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

D. Test Elements and Sequence. Each ECT shall include the following test elements:

(1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);

(2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

(3) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;

(4) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity;

(5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

(1) General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section F.1.2.F of these ESS Capacity Test Procedures.

(3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.

(4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.

F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section F.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:

(1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for the ESS Electric Meter Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;

(3) The ESS Capacity as determined by the ECT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section F.1.2.F of this ESS Capacity Test Procedure.

H. Supplementary ESS Capacity Test Protocol. No later than ninety (90) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the "Supplementary ESS Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh_{AC}) during the first four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all

purposes under this ESA.

J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh_{AC}) and the ESS Meter Energy In (MWh_{AC}) as below:

$$Roundtrip\ Efficiency\ (\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})} \times 100\%$$

F.2 ESS RESPONSE DELAY TEST

Purpose of Test:

1. Determine the System Charge Latency of the ESS
2. Determine the Charge Ramp Rate of the ESS
3. Determine the System Discharge Latency of the ESS
4. Determine the Discharge Ramp Rate of the ESS

Test Conditions:

The ESS Facility will be in the on-line state at between 30% and 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR.

Test procedure:

Measured Charge Latency:

1. Send an active power charge command of PMAX to charge the batteries
2. The time measured from when the ESS receives the PMAX charge command until the power measured at the ESS Electric Metering Device changes from 0 MW to at least 1% of charge PMAX shall be the Actual System Charge Latency

Measured Charge Ramp Rate:

1. Send an active power charge command of PMAX to charge the batteries
2. The differential in MW of ESS Charging Energy divided by the time measured to ramp from 1% to charge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Charge Ramp Rate

Measured Discharge Latency:

1. Send an active power discharge command of PMAX to discharge the batteries
2. The time measured from when the ESS receives the PMAX discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge PMAX shall be the Actual System Discharge Latency

Measured Discharge Ramp Rate:

1. Send an active power discharge command of PMAX to discharge the batteries
2. The differential in MW of ESS Discharge Energy divided by the time measured to ramp from 1% to discharge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Discharge Ramp Rate

Determination of ESS Response Shortfall:

The calculation below will demonstrate the determination of the ESS Response Shortfall used to determine ESS Response Shortfall Damages according to Section 3.13. For clarity, any occurrence of an Actual System Charge Latency Shortfall, an Actual System Discharge Latency Shortfall, an Actual Discharge Ramp Rate Shortfall, or an Actual Charge Ramp Rate Shortfall shall be considered an ESS Response Shortfall that shall result in an ESS Response Shortfall Damage in accordance with Section 3.13. An ESS Response Shortfall Damage shall be due for each instance in which any of the following equations result in a positive value.

i. An "Actual System Charge Latency Shortfall" shall be calculated, which shall be equal to:

Actual System Charge Latency Shortfall = Max (Guaranteed System Latency, Actual System Charge Latency) - Guaranteed System Latency

ii. An "Actual Charge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

Actual Charge Ramp Rate Shortfall = Max (Guaranteed Charge Ramp Rate, Actual Charge Ramp Rate) - Guaranteed Charge Ramp Rate

iii. An "Actual System Discharge Latency Shortfall" shall be calculated, which shall be equal to:

Actual System Discharge Latency Shortfall = Max (Guaranteed System Latency, Actual System Discharge Latency) - Guaranteed System Latency

iv. An "Actual Discharge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

Actual Discharge Ramp Rate Shortfall = Max (Guaranteed Discharge Ramp Rate, Actual Discharge Ramp Rate) - Guaranteed Discharge Ramp Rate

For the purposes of these equations Guaranteed Charge & Discharge Ramp Rate shall mean either the Guaranteed values in Section 3.12 or such other Buyer selected lesser ramp rate values per this Section F.2 of this Exhibit F.

F.3 Frequency Response Capability Test

A. Purpose of Test:

Demonstrate that the Energy Storage System is able to react to simulated changes in frequency applied by injecting a Frequency Profile at the Site Controller level.

B. Definitions:

Term	Value/Meaning
Guaranteed PMAX Charge Power	150 MW
Guaranteed PMAX Discharge Power	150 MW
Guaranteed Frequency Response	150 MW / 0.1 Hz
Point of Guarantee	High side of the generator step up transformer (115 kV)
Point of Measurement	High side of the generator step up transformer (115 kV)
CT Error	0.15% (estimated). The CT Error should be the error of the Current Transformer used during the test.
PT Error	0.15% (estimated). The PT Error should be the error of the Potential Transformer used during the test.
Meter Error	0.35% (estimated). The Meter Error should be the error of the Meter used during the test.
Loss Adjustment Factor	0.1%. The Loss Adjustment Factor shall take into account all electrical losses, including cabling, switchgear, and transformer losses (load and no load) between the Point of Measurement and Point of Guarantee
$FreqLow$	Low Frequency deadband setpoint
$FreqHigh$	High Frequency deadband setpoint
$\Delta FreqLow$	Frequency delta for low frequency
$\Delta FreqHigh$	Frequency delta for high frequency
$\Delta Power\ Low$	Power change for low frequency support
$\Delta Power\ High$	Power change for high frequency support

C. Pre-Test Conditions:

1. Pre-Test ambient conditions will be determined as part of the Commissioning and Test Procedures to be determined in accordance with Section 10.2 of the ESA.

2. Charge or discharge the Energy Storage System so that its SOE is between 30% and 60%.

3. If a ramp rate is required, the Energy Storage System should be configured with the appropriate ramp rate.

4. The Energy Storage System should report Available Discharge Power that is equal to or greater than the Guaranteed PMAX Discharge Power.

5. The Energy Storage System should report Available Charge Power that is equal to or greater than the Guaranteed PMAX Charge Power.

6. A frequency injection profile shall be applied at the Site Controller in a manner to be determined as part of the commissioning and test procedures. The frequency profile shall be agreed upon between the Parties prior to the test. The Site Controller shall be configured to source the frequency readings from the uploaded profile.

7. The charge portion of the test shall be conducted when energy available from the grid is expected to be greater than the Guaranteed PMAX Charge Power unless specified otherwise by Buyer. The Parties shall ensure that the Energy Storage System is not limited by the grid in its ability to discharge up to the Guaranteed PMAX Discharge Power throughout the duration of the test.

D. Test Procedure:

1. Confirm the Energy Storage System has zero output.
2. Initiate the reading from the Frequency Profile.
3. Wait for the full execution of the profile.

E. Recorded Values:

1. Battery Real Power (MW)
2. Grid Frequency (Hz)

F. Acceptance Criteria:

For each under-frequency event in the profile with a deviation from nominal of Frequency Low Deviation, in steady state:

$$Expected\ Power_{Under\text{-}Freq} * (1 - Meter\ Error) \leq Battery\ Real\ Power \leq Expected\ Power_{Under\text{-}Freq} * (1 + Meter\ Error)$$

Where the expected Energy Storage System response is defined as:

$$Expected\ Power_{Under\text{-}Freq} = \text{Min}\ [(\Delta PowerLow / \Delta FreqLow) * Frequency\ Low\ Deviation, Guaranteed\ Discharge\ PMAX]$$

Frequency Low Deviation = Simulated Frequency – FreqLow

For each over-frequency event in the profile with a deviation from nominal of *Frequency High Deviation*, in steady state:

$$Expected\ Power_{Over\text{-}Freq} * (1 - Meter\ Error) \leq Battery\ Real\ Power \leq Expected\ Power_{Over\text{-}Freq} * (1 + Meter\ Error)$$

Where the expected Energy Storage System response is defined as:

$$Expected\ Power_{Over\text{-}Freq} = \text{Max}\ [(\Delta\text{PowerHigh} / \Delta\text{FreqHigh}) * Frequency\ High\ Deviation, -Guaranteed\ Charging\ PMAX]$$

$$Frequency\ High\ Deviation = Simulated\ Frequency - FreqHigh$$

G. Grid-Forming Capabilities Tests (*To be finalized at a later date***)**

- Synthetic Inertia
- Voltage Persistence

EXHIBIT G
(to Energy Storage Agreement)

INSURANCE COVERAGES

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

A. Workers' Compensation Insurance, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Technology Errors and Omissions Insurance. Contractor and/or its subcontractors at its sole cost agree to maintain technology Errors and Omissions insurance coverage with insurance carriers with a rating of no less than A rated by Best's Insurance Guide.

Technology Errors & Omissions insurance providing coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright infringement. Technology services shall cover liabilities, punitive damages, and claim expenses arising from acts, errors and omissions, in rendering or failing to render all services and in the provision of all products in the performance of this Agreement, including the failure of products to perform the intended function or serve the intended purpose. Services insured, at a minimum, include (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of computer products, networks and systems (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software (10) data

entry, modification, verification, maintenance, storage, retrieval or preparation of data output, (11) violation of federal, state or foreign security and/or privacy laws and regulations including but not limited to investigative and notification costs regardless of whether such incurred costs were compulsory or voluntary and any other services provided by the Contractor under this Agreement. No exclusion/ restriction for unencrypted portable devices/ media may be on the policy. Policy shall have minimum limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations. Such insurance must address all of the foregoing without limitation if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services under this Agreement. The policy shall have worldwide coverage territory and provide coverage for wrongful acts, claims, and lawsuits brought anywhere in the world. Such insurance may be written on a claims-made rather that an occurrence basis as long as the policy, (a) has a retroactive date prior to the date of project commencement, and (b) is maintained by Contractor throughout the performance of Services or storage of data in connection with this Agreement and for at least three (3) years thereafter either through policies in force or through an extended reporting period. Contractor shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Contractor is providing services which provide direct access to Buyer's systems or holding sensitive information of Buyer, then the policy shall include Network Security/Privacy coverage. This policy shall include coverage for loss, disclosure and theft of data in any form; media and content rights infringement and liability, including but not limited to, software copyright infringement; network security failure, including but not limited to, denial of service attacks and transmission of malicious code. Coverage shall include data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally-related crisis management expense for up to one (1) year.

F. Property Insurance. During construction and operation, Seller shall provide or arrange the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. 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, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

EXHIBIT H
(to Energy Storage Agreement)

AVAILABILITY GUARANTEES

Section 1. Definitions.

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

"**Actual ESS Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

"**Annual Report**" has the meaning set forth in Section 2.3 of this Exhibit.

"**ESS Availability Damages**" has the meaning set forth in Section 2.1(B) of this Exhibit.

"**ESS Availability LD Rate**" has the meaning set forth in Section 2.1(B) of this Exhibit.

"**ESS Available Hours**" means for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Year, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Year. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Excused Hours**" means, the aggregate Seller Excused Hours to the extent that the ESS is affected during such hours. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Period Hours**" means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year, provided, that for any leap year, ESS Period Hours means eight thousand seven hundred eighty-four (8,784) hours.

"**ESS Unavailable Hours**" means those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Discharge Energy or

accepting Charging Energy. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Monthly ESS Availability**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Monthly ESS Available Hours divided by (ii) the Monthly Hours.

"**Monthly ESS Available Hours**" means for a relevant calendar month during any Commercial Operation Year, an amount of hours equal to the difference between (a) Monthly Hours, minus (b) the aggregate ESS Unavailable Hours in such calendar month. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Monthly Guaranteed ESS Availability**" has the meaning set forth in Section 2.1(A) of this Exhibit.

"**Monthly Hours**" means the product of (a) twenty-four (24), multiplied by (b) the number of calendar days in such calendar month.

Section 2. Availability Guarantees.

1. ESS Availability Guarantee.

(A) ESS Availability Guarantee. Seller guarantees that during each calendar month during the Term (prorated for partial months), the ESS shall achieve a Monthly ESS Availability equal to or greater than ninety percent (90%) ("**Monthly Guaranteed ESS Availability**").

(B) ESS Availability Damages. For any calendar month during any Commercial Operation Year during which Seller fails to meet the Monthly Guaranteed ESS Availability, Seller shall pay Buyer liquidated damages in the amount equal to Seven U.S. Dollars and Seventy-Five Cents ($7.28) per MWh ("**ESS Availability LD Rate**") below the Monthly Guaranteed ESS Availability ("**ESS Availability Damages**"). A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

2. 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 Monthly Guaranteed ESS Availability) shall be the payment of damages, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the ESA, 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)(5) of the ESA, as applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the ESA and Seller's material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practices or Seller's failure to pay ESS Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the ESA are an Event of Default of Seller for which Buyer may terminate the ESA and seek damages in accordance with Section 12.4 of the ESA.

3. Annual Report. No later than the tenth (10th) Day of each calendar month during each Commercial Operation Year (or ten (10) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Monthly ESS Availability for the previous calendar month and the ESS Availability Damages, if any, due to Buyer (the "**Monthly Report**"). Such Monthly Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Monthly Report.

5. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the ESA.

ATTACHMENT 1 TO EXHIBIT H

EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES

I. Example of Monthly ESS Availability Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

		Hours
	Monthly Hours ("MH")	720
	ESS Unavailable Hours ("EUH")	86

Given these assumed facts, the Monthly ESS Available Hours for the ESS during the specific calendar month would be calculated as follows:

Monthly ESS Available Hours = MH – EUH: 634 = 720 – 86

Monthly ESS Availability

Given these assumed facts, the Monthly ESS Availability for the Project during the specific calendar month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Sum of Monthly Hours: 720 hours

(c) Monthly ESS Availability: (Sum of Monthly ESS Available Hours/Monthly Hours) x 100 = (634/720) x 100 = 88.1%

II. Example of ESS Availability Damages

Example of ESS Availability Damages based on the following assumed facts:

(a) Seller's Monthly Guaranteed ESS Availability = 90%.

(b) Seller's Monthly ESS Availability = 88.1%.

(c) Seller's Guaranteed ESS Capacity = 150 MW.

Given these assumed facts, Seller calculates the ESS Availability Damages for such calendar month due to Buyer as follows:

(Seller's Monthly Guaranteed ESS Availability – Seller's Monthly ESS Availability) (the latter two expressed as a decimal) x Monthly Hours (assuming a 30-day month) x ESS Availability LD Rate x Seller's Guaranteed ESS Capacity = ESS Availability Damage

$$(0.90 – 0.881) \times 720 \times \$7.28 \times 150 = \$14,938.56$$

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 86 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

EXHIBIT I
(to Energy Storage Agreement)

FORM OF SELLER GUARANTY

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Energy Storage Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are

deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

(a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

(b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with *Section 9* below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a limited liability company duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and

(c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a

release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

7. REINSTATEMENT. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

8. TERMINATION. Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

9. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

TO GUARANTOR: *	*TO COUNTERPARTY:*
[●]*Attn:* Treasurer	[●]*Attn:*
[Tel: [●] *-- for use in connection with courier deliveries]*	*[Tel:* [●] *-- for use in connection with courier deliveries]*

Any Notice given in accordance with this *Section 9* will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New 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 J
(to Energy Storage Agreement)

COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by Sun Lasso Energy Center LLC ("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated October 25, 2024 ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of 150 MW for four (4) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project and that the Project meets, at a minimum, the requirements indicated in items (1) and (3) above.

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

[●]	**[Licensed Professional Engineer]**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
	Date: _____
	License Number and LPE Stamp: _____

EXHIBIT K
(to Energy Storage Agreement)

ROUNDTRIP EFFICIENCY GUARANTEE

Year	Annual R/T Eff
1	83.45%
2	83.28%
3	83.11%
4	82.93%
5	82.76%
6	82.59%
7	82.42%
8	82.25%
9	82.08%
10	81.91%
11	81.74%
12	81.57%
13	81.40%
14	81.23%
15	81.06%
16	80.89%
17	80.73%
18	80.56%
19	80.39%
20	80.22%

EXHIBIT L
(to Energy Storage Agreement)

ESS Operating Restrictions

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions:

1. Maximum of two (2) Equivalent Full Cycles per day
2. Maximum annual average state of charge: 75%
3. Max operating temperature of 45°C
4. State of charge cannot remain below 3% for greater than 1 hour continuously

EXHIBIT M
(to Energy Storage Agreement)

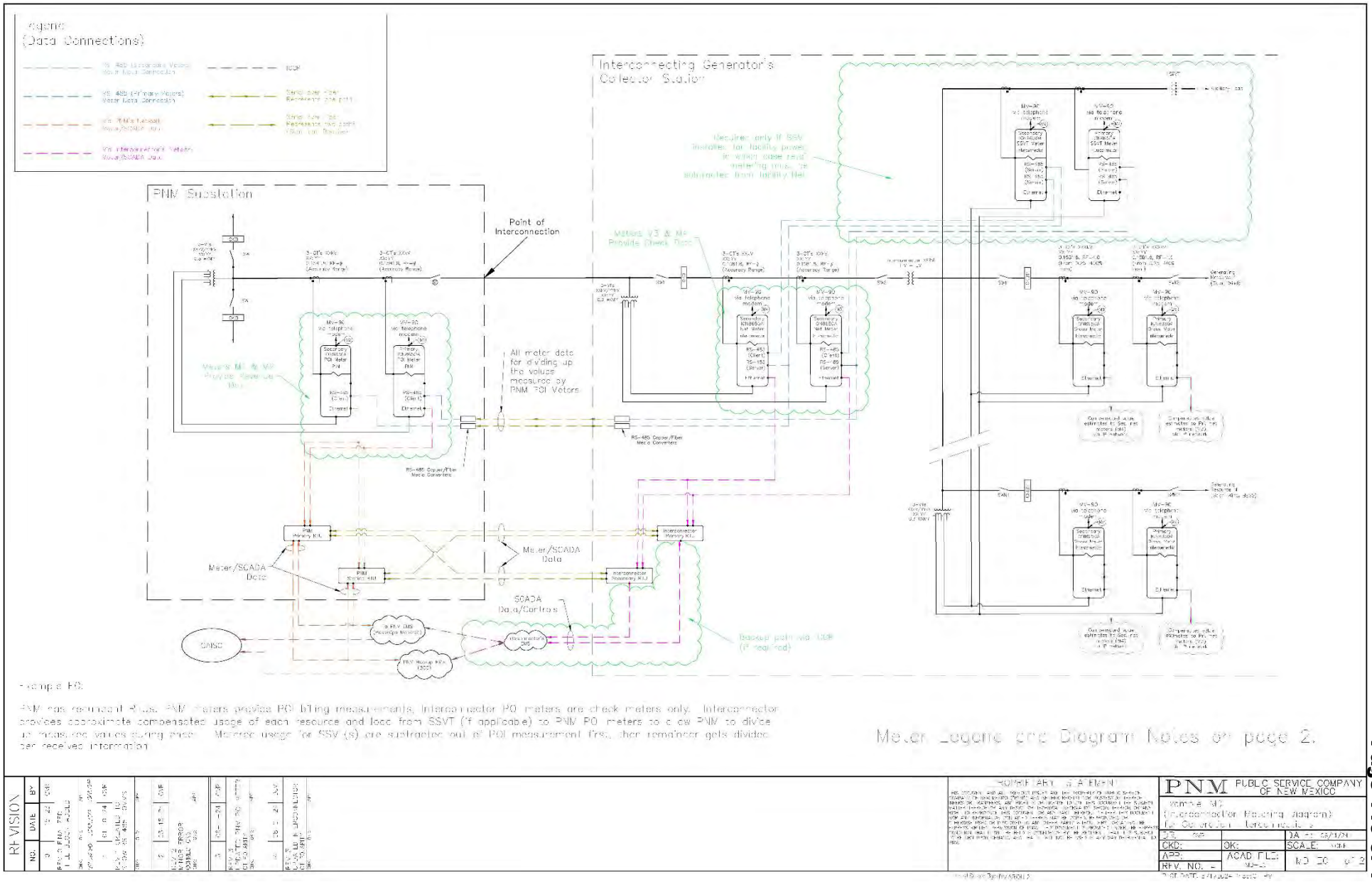
ESS Functional Mapping

The Project's NERC verified ESS Generation Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Scheduling Coordinator Contact (SCC)				

EXHIBIT N
(to Energy Storage Agreement)

Example Interconnection Metering Diagram



Legend (Meters)

Meter	Description	Metering Data Requirments	Output Data
M1	POI Meter (Primary Revenue Meter)	Revenue quality metering data for the After-the-Fact (ATF) metering (MV90) system and awareness at Operations Control Center	MW, Mvar, kV_{LL}, MWH, MVARH
M2	POI Meter (Secondary Revenue Meter)	Revenue quality metering data for the After-the-Fact (ATF) metering (MV90) system and awareness at Operations Control Center	MW, Mvar, kV_{LL}, MWH, MVARH
M3	Facility Net Meter (Primary Check Meter)	Facility net output data to primary RTU for telemetry to Control Center and awareness at Operations Control Center	MW, Mvar, kV_{LL}, MWH, MVARH
M4	Facility Net Meter (Secondary Check Meter)	Facility net output data to primary RTU for telemetry to Control Center and awareness at Operations Control Center	MW, Mvar, kV_{LL}, MWH, MVARH
M5	Gross Meter, Resource 1 (Primary)	Resource gross output data from primary RTU for telemetry to Control Center and awarness at Operations Control Center and revenue quallity data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH
M6	Gross Meter, Resource 1 (Secondary)	Resource gross output data from primary RTU for telemetry to Control Center and awarness at Operations Control Center and backup revenue quallity data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH
M7	SSVT Meter (Primary)	SSVT Load Data from Primary meter for telemtry to Control center and awareness at Operations Control Center and revenue quality data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH
M8	SSVT Meter (Secondary)	SSVT Load Data from Secondary meter for telemtry to Control center and awareness at Operations Control Center and revenue quality data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH
Mx	Gross Meter, Resource N (Primary)	Resource gross output data from primary RTU for telemtry to Control center and awareness at Operations Control Center and revenue quality data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH
My	Gross Meter, Resource N (Secondary)	Resource gross output telemetry using ICCP or backup RTU to Control center and awareness at Operations Control Center, backup revenue quality data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH

Notes:

1. There must be no single point of failure for the measurement and transmission of real-time metering data to PNM's EMS. This includes networking equipment and communication paths. In the event that real-time metering data becomes unavailable or unreliable, PNM will require that the interconnected generation is disconnected until access to reliable data is re-established.

2. PNM SCADA data to the facility will also include Automatic Generation Control (AGC) setpoints. PNM can also provide to the interconnecting facility SCADA data on the transmission line including: status of the sectionalizing breaker(s), disconnect switch status, and the POI meter data as applicable. A full list of SCADA data to be exchanged will be coordinated between PNM and the interconnector during design for the facilities.

3. MW and MVAR data sent to PNM Operations should follow PNM Operation's convention where wholesale generation is positive and wholesale load is negative.

4. MW and MVAR data sent to and within PNM POI Meters should follow the convention where wholesale generation is negative and wholesale load is positive.

REVISION

NO.	DATE	BY	
0	11-15-23	CVR	REV 0 FINALIZED TITLE BLOCK ADDED
1	01-10-24	CVR	REV 1 CREATED TO SHOW RS-485 COMMS
2	03-15-24	CVR	REV 2 MINOR ERROR CORRECTIONS
3	06-11-24	CVR	REV 3 UPDATED PNM POI METER CT POLARITY
4	08-01-24	DJM	REV 3 UPDATED INTERCONNECTOR CT POLARITY

LastSavedBy: DMARQUI2

PNM PUBLIC SERVICE COMPANY OF NEW MEXICO

Example IMD
(Interconnection Metering Diagram)
for Generation Interconnections

DR: CVR		DATE: 06/11/2024	
CKD:	OK:	SCALE: NONE	
APP:	ACAD FILE: IMD-E0	IMD-E0 1 of 2	
REV. NO. 4			

PLOT DATE: 8/1/2024 1:55:20 PM

EXHIBIT O
(to Energy Storage Agreement)

COMMISSIONING AND TESTING PROCESS

Section 1. Purpose.

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the ESA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Example Interconnection Metering Diagram as outlined in Exhibit N of the ESA and complete all testing as defined in Exhibit F of the ESA.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the ESA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.

CONTACT	Company	Group	Address	Project Role	Office Phone	Mobile Phone	E-MAIL
Eric Meadors	PNM	Generation Contracts & Development	2401 Aztec Rd NE, MS Z120, Albuquerque, NM 87107	Contract Manager	505-241-2179	505-801-7803	Eric.Meadors@pnm.com

The POC List shall identify, but not be limited to, the following:

Buyer Team: Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.
- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.
- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.
- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect ("**PCI**") modeling for functionality required for the participating resource schedule coordination ("**PRSC**") (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.
- Power Operations, "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- Project Manager – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – Shall mean the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.
- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.
- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:
    - Balancing Area Authority (BAA)
    - Transmission Owner (TO)

- Transmission Operator (TOP)
- Generator Owner (GO)
- Generator Operator (GOP)
- Scheduling Coordinator (SC)
- Distribution System Operator (DSO)

Section 3. Process Overview.

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

Section 3.1 Commissioning Kickoff Meeting.

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

Section 3.2 Pre-Commissioning.

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

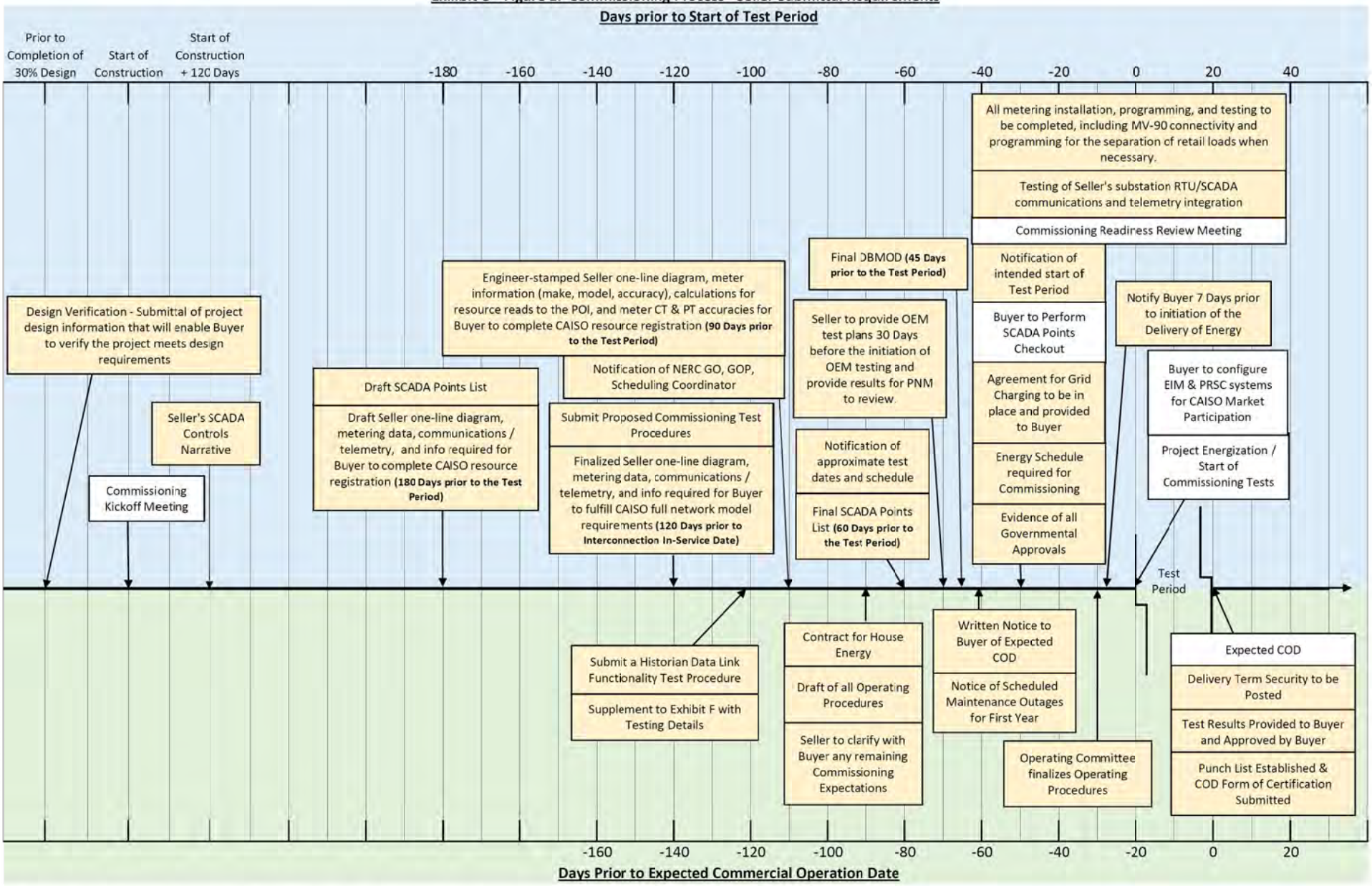
Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1:

TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving ESA obligations, including grid forming inverters, metering, etc.	**Seller**	Generation Engineering	After completion of 30% design phase of project
Seller's SCADA Controls Narrative	Controls narrative detailing items related to SCADA and telemetry planning.	**Seller**	PowerOps	120 Days after Start of Construction
	Final DB Mod file delivered to PowerOps.	**Seller**	PowerOps	45 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing.	**Seller**	Buyer's Project Manager	30 Days prior to the scheduled Test Period
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Example Interconnection Metering Diagram in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	30 Days prior to the scheduled Test Period
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. Delays in Seller's submission to Buyer of this information will likely result in a delay in the transmission interconnection in-service date.	**Seller**	PowerOps	120 Days prior to transmission interconnection in-service date
	Buyer EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps.	**PowerOps**	Seller	
	Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter.	**Seller**	PowerOps	No later than 90 Days prior to the scheduled Test Period
Power Operations Engineering Requirements for Commissioning (Attachment 1)	This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout 30 Days prior to the beginning of the scheduled Test Period.
Power Operations & WPM Systems configuration	EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent ESS resources for CAISO market participation.	**PowerOps & WPM IT Support**	Seller	Prior to the beginning of the scheduled Test Period
Agreement for Grid Charging during testing	During testing/commissioning of facilities, agreements need to be in place with a copy provided to Buyer to allow and plan for grid charging of batteries during the testing process. These agreements will clearly define WPM, GO, GOP or their SC, BA, TO and TOP.	**Seller**	Generation Engineering	Must be complete 30 Days prior to the beginning of the scheduled Test Period.
Operating Procedure	Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering.	**Seller**	PowerOps	90 Days prior to the Commercial Operation Date
	An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system.	**Seller/Buyer**	Seller / PowerOps / Generation Engineering	30 Days prior to the Commercial Operation Date

Requirement	Description	Responsible Party	Contributor(s)	Timeline
OEM Test Plan	The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide manufacturers' test plans and provide results for Buyer to review. Buyer may be an observer for these tests and shall be provided with the results.	**Seller**	Generation Engineering	Test plans required 30 Days before the initiation of the OEM Test Plan, all OEM related testing must be completed prior to declaring COD
Test Energy Plan & Schedule	Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated ESA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans.	**Seller**	Generation Engineering	Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period.
Commissioning Readiness Review Meeting	Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: Attachment 2: Commissioning Readiness Review	**Generation Engineering**	Seller, PowerOps	30 Days prior to the beginning of the scheduled Test Period

Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements



Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

Section 3.3 Commissioning.

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the ESA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.

- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Historian Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the ESA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

For Seller's commissioning activities that require Buyer scheduling of energy delivery, Seller's failure to advise Buyer of any change to the planned timing of commissioning activities prior to 48 hours in advance of the change may result in an inability of Seller to conduct testing. Any such delay in commissioning activities as a result of late notification will be to Seller's account.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

Section 3.4 Final Requirements Prior to COD.

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

ATTACHMENT 1 TO EXHIBIT O

BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer 90 Days prior to the beginning of the Test Period:
    a. Nameplate values: MW, MWh, round trip efficiency, etc.
    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.
    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.
    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.
    d. Telemetry for Seller's substation awareness shall include:
        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - ESS total gross values and total net values (in both MW and MVAr)
                - Gross and net values shall be provided for each resource registered with CAISO
            - Point of Delivery values – MW, MVAr
            - AGC setpoints for ESS and voltage setpoint. As well as the feedback for those setpoints.
            - Total ESS cycle count
            - Total ESS State of Charge (SOC) in both percent and MWH
            - Total real power target
            - Total full charge energy
            - Total nominal energy

- Total energy Rem full power
- Total max charge power

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

ATTACHMENT 2 TO EXHIBIT O

COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. Confirmation that everything is in place to begin testing.
    a. The configuration of the system is stabilized.
    b. All planned preliminary, informal, functional, unit level, subsystem, system, and qualification tests have been conducted with satisfactory results.
    c. Any deficiencies detected in the system have been addressed.
5. The expected result and how might the test evaluation results affect the program.
6. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
7. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and operational testers prior to any test using personnel.
8. The fallback plan should a technical issue or potential showstopper arise during testing.
    a. The test director that will decide if an issue is a showstopper.
9. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

Corazon Storage ESA

PNM Exhibit GBB-4

Is contained in the following 131 pages.

CONFIDENTIAL

ENERGY STORAGE AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

CORAZON ENERGY STORAGE LLC

Dated as of October 25, 2024

EXHIBITS

ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (this "ESA"), as may be amended from time to time, is entered into this 25th Day of October, 2024 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Corazon Energy Storage LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 1780 Hughes Landing Boulevard, Suite 675, The Woodlands, TX 77380. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a "**Party**" and collectively as the "Parties."

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

WHEREAS, Seller desires to develop, design, construct, own and operate an energy storage facility, as further defined herein and in Exhibit A; and

WHEREAS, Seller desires to sell and deliver to Buyer the Product (as defined herein) from the Project, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA.

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

"**Actual Charge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual Discharge Ramp Rate Delay**" has the meaning set forth in Exhibit F.

"**Actual System Latency Delay**" has the meaning set forth in Exhibit F.

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

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

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

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

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

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

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

"**Balancing Area Authority**" 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 (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Buyer in connection with the termination of this ESA, to the extent such costs are not already accounted for under Replacement ESS Costs.

"**Buyer-Requested Performance Tests**" has the meaning set forth in Section 10.5.

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value, plus (c) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. To the extent the total value of the calculation in subpart (b) above is negative, the value used in such subpart (b) will be zero. The Buyer Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages.

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

"**Charging Energy**" means the amount of Energy supplied by Buyer at Buyer's cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured in MWh by the Electric Metering Devices, accounting for estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Commercial Operation**" means that (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe

operating conditions on any interconnected system; (b) Seller has successfully completed the ESS Reliability Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental Approvals required for Seller to operate the Facility in accordance with Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this ESA; and (h) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

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

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

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

"**Commissioning Performance Test**" means the Initial ESS Unit Capabilities testing detailed in Exhibit F required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

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

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

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

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

"**Contract Value**" means the sum of the present values of the ESS Payments for each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination), which annual amount is equal to (a) the quantity of ESS

Capacity expected to be made available during such Commercial Operation Year (or portion thereof) times (b) the ESS Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

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

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

"**DC**" means direct current.

"**Debt**" means solely with respect to Seller after the Commercial Operation Date, without duplication, (a) all obligations of Seller for borrowed money, (b) all obligations of Seller evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of Seller to pay the deferred purchase price of property or services, except trade accounts payable and other accrued expenses arising in the ordinary course of business, (d) all deferred obligations of Seller to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, line of credit or other instrument, and (e) obligations of Seller in respect of interest rate swap agreements, caps, collars, or other interest rate hedging mechanisms. Provided however, for the avoidance of doubt, Debt shall not include any obligations of Affiliates of the Seller or the Ultimate Parent to any Lender, or any other borrowing obligation by such entity that pledges their direct or indirect ownership interest in Seller as collateral for such obligation.

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

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

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

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

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

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

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

"**Discharge Energy**" means Energy discharged from the ESS and delivered to Buyer at the Point of Delivery, as measured in MWh by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties.

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

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

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

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

"**Downgrade Event**" shall mean that the long-term credit rating of a Person's long-term senior unsecured debt is not "Baa3" 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 as set forth in Appendix A of the Interconnection Agreement.

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

"**Eligible Change in Tariff**" means any duty, tariff, import tax, or other similar import fee or cost that becomes effective after, or the enforcement of which commences after, the Execution Date, or any increase to the applicable rate of any of the foregoing which becomes effective after the Execution Date, to the extent affecting the Energy Storage System. For the avoidance of doubt, the 25% tariff on lithium-ion batteries enacted pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), with an effective date of January 1, 2026, shall not be considered an Eligible Change in Tariff.

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

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer's dispatch instructions and subject to the terms and conditions of this ESA.

"**Energy Storage System**" or "**ESS**" means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment

necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's delivery or storage of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (a) 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 (b) 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, or federal legislation or regulation relevant to the avoidance of any emission described above under any governmental or, regulatory program, 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 (x) Tax Benefits, (y) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (z) 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 Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

"Equivalent Full Cycle" means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total ESS Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

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

"**ESS Capacity**" means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for four (4) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Payment Rate** " means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

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

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Non-Performance Liquidated Damages**" has the meaning set forth in Section 3.13.

"**ESS Operating Restrictions**" means the operating restrictions of the ESS set forth in Exhibit L.

"**ESS Response Delay**" has the meaning set forth in Exhibit F.

"**ESS Response Delay Damages**" has the meaning set forth in Section 3.13(B).

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the ESS Electric Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Unit Capabilities**" has the meaning set forth in Section 3.12.

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

"**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.

"**Frequency Response Capability**" means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy Storage Services provided therefrom are eligible to receive or generate, based on Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date. Future Environmental Attributes are further described in Section 7.3 and Article 11 herein.

"**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 ESA or the procurement pursuant to this ESA of Environmental Attributes 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 with jurisdiction in the United States.

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

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

"**Guaranteed Charge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed Discharge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed ESS Capacity**" has the meaning set forth in Section 3.12 and shall be valid for the full duration of the ESA with no allowance for degradation.

"**Guaranteed ESS Roundtrip Efficiency**" has the meaning set forth in Section 3.12.

"**Guaranteed PMAX**" has the meaning set forth in Section 3.12.

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

"**Guaranteed System Latency**" means the guaranteed time measured between when the control signal is received and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as specified in Section 3.12.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land,

water, groundwater, and air, including but not limited to any material or substance that is (a) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" means energy consumed by the ESS while the ESS is not charging or discharging as well as energy consumed by ESS ancillaries not directly involved in the control, receipt, storage, or discharge of energy during charging or discharging.

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

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

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

"**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.

"**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 (a) lending money or extending credit (including any financing lease, monetization of tax benefits, construction, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or its Affiliates: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing (including tax equity bridge financing), credit support, credit enhancement or interest rate protection in connection with the Project; (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 that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

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

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

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

"Maximum State of Charge" means the relative SOC above which the battery manufacturer recommends that the ESS system not be charged, expressed in percent of Nameplate Energy Capacity.

"Minimum State of Charge" means the relative SOC below which the battery manufacturer recommends that the ESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

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

"**Monthly Billing Period**" means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.8.

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

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

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

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

"Nameplate Energy Capacity" is the maximum amount of energy in MWh, less auxiliary loads, that the ESS can store at 100% state of charge.

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

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

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

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

"**Non-Governmental Compliance Obligations**" means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees,

accounts, and/or other obligations with NERC, WECC, and all other applicable agencies, and self-regulatory organizations to which the Party is required to have membership and/or submit to jurisdiction in the performance of this ESA.

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

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

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

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

"**Operating Records**" means all operating logs, operating manuals, warranties on equipment, material engineering drawings, environmental permits, plans, and studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

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

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

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

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

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

"**Point of Delivery**" means, unless otherwise modified in accordance with Section 3.11, the electric system point at which (a) Buyer delivers Charging Energy to Seller, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA.

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

"**Product**" means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, all as made available by the Project, all of which shall be delivered for Buyer's exclusive use pursuant to the terms of this ESA.

"**Project**" means Seller's energy storage facility, located on the Site, with a designed maximum power discharge capability of 150 MW for four (4) hours (600 MWh), as identified and

described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller's equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

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

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

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

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

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

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"**Rating Agency**" shall mean S&P or Moody's.

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

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

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

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator, as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Replacement ESS Costs**" means the actual costs incurred by Buyer following an Event of Default that are reasonable and necessary to replace the Product (based upon similar terms, conditions and performance standards outline in this ESA) which Seller, in accordance with this ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable Product delivered to Buyer's system, as reasonably determined by a third party reasonably acceptable to both Parties. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this ESA.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"**Scheduled Maintenance Outage**" means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this ESA, or as otherwise agreed by Seller and Buyer.

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

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Security**" means Development Security or Delivery Term Security, as applicable.

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

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, (c) any failure by Buyer to perform a material obligation under this ESA (other than due to a breach by Seller of its obligations under this ESA), (d) failure of Buyer to provide Charging Energy, (e) Emergency Condition or (f) Buyer's dispatch of the Project which is not in accordance with the Operating Parameters.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery and not associated with Seller Excused Hours.

"**Seller Guarantor**" means an entity with a long-term senior unsecured debt credit rating of "Baa3" or higher by Moody's or "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 I.

"**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 all or substantially all of the assets of Seller or Seller's Ultimate Parent in a single transaction; *provided* that (in the case of each of (b) or (c)) following such transfer the assignee (A) 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); (B) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (C) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA (or otherwise agrees to maintain the existing Development Security or Delivery Term Security, as applicable, for the Project).

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Product) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual

Reporting filing, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or in entering into new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this ESA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this ESA.

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. For the avoidance of doubt, this ESA is Site specific and any relocation of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. For the avoidance of doubt, adding or subtracting contiguous parcels of property will not be deemed a relocation requiring Buyer consent.

"**Supplemental Tax Incentive**" means any federal, state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of the ESS.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits, Supplemental Tax Incentives, and any other tax credits that are or will be generated by the

Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the tax 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, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

"**Term**" means the period during which this ESA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

"**Transmission Provider**" means the Person, designated agent, or 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'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 Plus Power, LLC.

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this ESA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this ESA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this ESA, the terms of this ESA shall take precedence.

(D) This ESA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this ESA, and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this ESA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this ESA. Unless expressly provided otherwise in this ESA, (i) where the ESA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the ESA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) Use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(H) All uses of the word "shall" in this ESA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party shall conduct its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this ESA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this ESA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of House Energy, backfeed power or station service power. Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be able to be financially separated from the metering of Charging and Discharging of the ESS.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this ESA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) House Energy, backfeed power, and station service power shall be real time measured by a dedicated electric metering device and shall not be delivered by Seller to Buyer under this ESA.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This ESA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth (20th) Commercial Operation Year, subject to the early termination provisions set forth herein. Applicable provisions of this ESA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms, and as more fully set forth in this ESA, apply to the transaction contemplated by this ESA:

COMMERCIAL TERMS

<table>
<tr><td>Buyer: Public Service Company of New Mexico</td><td>Seller: Corazon Energy Storage LLC</td></tr>
<tr><td colspan="2">Project: Corazon Energy Storage</td></tr>
<tr><td colspan="2">Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of “Point of Delivery.”</td></tr>
<tr><td>Contract Term: Twenty (20) Commercial Operation Years</td><td>Product Type: Bundled Discharge Energy, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services</td></tr>
<tr><td colspan="2">ESS Payment Rate: $15.40 per MWh</td></tr>
<tr><td colspan="2"></td></tr>
<tr><td>Day(s) of week: Monday through Sunday, including NERC holidays</td><td>Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time (“MST”)</td></tr>
<tr><td colspan="2">Guaranteed Start Date: One Hundred Fifty (150) Days after the Expected Commercial Operation Date</td></tr>
<tr><td colspan="2">Expected Commercial Operation Date: 12/31/2027</td></tr>
</table>

3.2 Project. Exhibit A provides a detailed description and implementation schedule (“**Project Schedule**”) of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed material changes in the Project or Project Schedule.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point and the location of the Interconnection Facilities is included in Exhibit A to this ESA. Exhibit A also contains a preliminary indication of the location of the ESS at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS 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 in accordance with Prudent Utility Practices, the Interconnection Agreement, and the terms of this ESA. The Project shall meet or exceed the recommended performance specifications of this Section 3.4.A thru Section 3.4.H, and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 thru Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N – Example Interconnection Metering Diagram from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Discharge Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) receive Charging Energy from Buyer and deliver Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of operation over an ambient temperature range of -20°F to 110°F with the full range of relative humidity;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of disconnection remotely by the System Control Center;

(I) meet or exceed the recommended performance specifications of this Section 3.4.I thru Section 3.4.K, and as appropriately defined in IEEE Standard 2800-2022 Sections 5, Section 6 and Section 7 at the Point of Delivery, at all times;

(J) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Sections 5 at the Point of Delivery;

(K) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Sections 7 at the Point of Delivery, which shall be Category II minimum;

(L) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery; and

(M) no later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Sections 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as set forth in this ESA, the Commercial Operation Date shall occur no later than the Guaranteed Start Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis, (a) up to a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event that delays commencement of operation of the Project , (b) if PNM is the Transmission Provider, on a day-for-day delay up to a maximum of one hundred eighty (180) days in the event of delay associated with the interconnection of the Project (other than work performed by Seller) that delays commencement of the operation of the Project, assuming Seller provides notice to proceed to Transmission Provider within five (5) business days of notice of Conditions Precedent per Section 6.2, and (c) on a day-for-day basis without an aggregate cap for the time period representing Buyer's delay or other failure to perform in a timely manner any of its material obligations under this Agreement which are to be performed prior to the Expected Commercial Operation Date in a manner that delays Seller's ability to achieve Commercial Operation on or before the Expected Commercial Operation Date. Seller shall give written notice to Buyer describing any such delay in accordance with Section 14.2 after becoming aware of any extension of Expected Commercial Operation Date. The number of Days of such extension shall be calculated from the date on which the event begins. If an event will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this ESA without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to (i) Three Hundred Fifty Dollars ($350) per Day per each MW of Delayed Capacity for each Day of delay that occurs prior to June 1 and after September 30 of a calendar year and (ii) One Thousand Dollars ($1,000) per Day per each MW of Delayed Capacity for each Day of delay that occurs on or after June 1 and on or before September 30 of a calendar year, until the earlier of (a) the Commercial Operation Date, and (b) the Guaranteed Start Date. "**Delayed ESS Capacity**" means the Guaranteed ESS Capacity minus the ESS Capacity as of the determination date. Notwithstanding the foregoing, if the Commercial Operation Date has not occurred before the earlier of (i) the Guaranteed Start Date or (ii) the exhaustion of the Development Security, then Seller shall thereafter have the right for thirty (30) days to immediately terminate this Agreement by providing written notice thereof to Buyer, provided however, that in such instance neither Party shall be deemed to be the Defaulting Party and, other than the Delay Damages already incurred, no Buyer Termination Payment shall be due.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of One Million Five Hundred Thousand Dollars ($1,500,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount

equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Period. Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generation Operator and will designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M, forty-five (45) Days prior to the beginning of the Test Period. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver (net of losses due to ESS Roundtrip Efficiency) such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharging Energy. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of such Test Period. Scheduling for subsequent deliveries of Discharge Energy shall be as set forth in section 5.1.

3.10 Notice of Commercial Operation. Not less than thirty (30) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied (the "Commercial Operation Notice"). Buyer shall in writing either accept or reject Seller's Commercial Operation Notice within fifteen (15) business days after the date of such Commercial Operation Notice, in its reasonable discretion, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. If Buyer fails to respond to the Commercial Operation Notice within fifteen (15) business days after the date of such Commercial Operation Notice, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) business days the date set forth in the Commercial Operation Notice. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Charging. The ESS shall be configured to charge exclusively using Energy provided by the Buyer from the electrical grid. Seller shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid by the Commercial Operation Date.

3.12 ESS Unit Capabilities. "ESS Unit Capabilities" means all of the following for the ESS, all as measured and determined at the Point of Delivery:

(A) Guaranteed PMAX of 150 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) Guaranteed ESS Capacity: discharge ESS at Guaranteed PMAX for 4 (600 MWh) consecutive hours; starting at the Maximum State of Charge and ending at the Minimum State of Charge

(C) Guaranteed ESS Roundtrip Efficiency as shown in Exhibit K; Seller shall provide any applicable degradation forecasts applicable to this guarantee;

(D) Guaranteed Discharge Ramp Rate of Guaranteed PMAX per second measured between 90% state of charge and 10% state of charge representing the maximum rate that the ESS can change its output power;

(E) Guaranteed Charge Ramp Rate of Guaranteed PMAX per second measured between 10% state of charge to 90% state of charge representing the maximum rate that the ESS can change its input power;

(F) Guaranteed System Latency: <1 second

(G) Guaranteed Frequency Response Capability of Guaranteed PMAX/0.1Hz;

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5(D). Seller will pay Buyer the following liquidated damages ("**ESS Non-Performance Liquidated Damages**") as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, or (b) failure of Buyer to deliver Charging Energy) or to comply with the requirements of Section 7.4(a).

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Forty Thousand Dollars ($140,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured; and

(B) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, or Guaranteed System Latency during ESS Unit Capabilities Testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. In the event that the ESS fails to meet the Guaranteed Frequency Response Capability, Seller shall pay to Buyer an amount equal to ten thousand dollars ($10,000) per event of failure; provided, however, under no

circumstances will ESS Non-Performance Liquidated Damages exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay ESS Availability Damages as defined in Exhibit H, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

3.15 Guaranteed ESS Roundtrip Efficiency Payment. If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to $100/MWh * Guaranteed PMAX * 4 hours * (1 - ESS Roundtrip Efficiency/Guaranteed ESS Roundtrip Efficiency).

3.16 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof supplied to Buyer under this ESA is not prohibited by Applicable Law. Any breach of this Section 3.16 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.16 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.17 Eligible Change in Tariff. Notwithstanding any other provision of this ESA, to the extent an Eligible Change in Tariff occurs after the Execution Date that increases Seller's costs that could reasonably have been contemplated as of the Execution Date to take all actions to comply with Seller's obligations under this ESA by more than one and one half percent (1.5%) of the Contract Value at Contract execution, the Parties shall use good faith, commercially reasonable efforts to agree upon an equitable increase to the ESS Payment and if the Parties cannot agree upon any such increase to the ESS Payment within thirty (30) days following Buyer's receipt of Seller's notice despite using good faith, commercially reasonable efforts, Seller shall have the right to terminate this Agreement upon notice to Buyer unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security and Delivery Term Security, as applicable, to Seller within fifteen (15) days after such termination.

ARTICLE 4
AGC

4.1 AGC.

(A) Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer

to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability. Total cycles shall not exceed three hundred sixty-five (365) Equivalent Full Cycles in any Commercial Operation Year. Notwithstanding anything in this ESA to the contrary, Seller will have no obligation to dispatch the ESS in response to any dispatch instructions provided by PNM that are not in accordance with the Operating Parameters, and the time period during which non-conforming instructions are given will be considered Seller Excused Hours.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this ESA. Seller shall secure transmission necessary (i) to deliver the Discharge Energy to the Point of Delivery, and (ii) receive Charging Energy from the grid at the Point of Delivery to the ESS, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project.

(B) Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy at the Point of Delivery for the Project at the required voltage, including the costs of any associated network upgrades. As between Buyer and Seller under this ESA, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges required to deliver Discharge Energy from and beyond the Point of Delivery. Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) to deliver Charging Energy to the Point of Delivery including for the avoidance of doubt during the Test Period.

(E) Seller shall provide to Buyer a finalized one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to provide this information to Buyer in a timely manner.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers ("CTs") and potential transformers ("PTs") ("Back-Up Metering"), each in an arrangement consistent with the configuration depicted in Exhibit N, or as otherwise agreed between the Parties.

(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 Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this ESA. The design of the Electric Metering Device system shall be subject to Buyer approval, not to be unreasonably withheld, prior to commencement of construction of the Project. Buyer will, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. ESS Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous, five minute, fifteen minute and hourly real and reactive Energy and capacity, if supplied by either the grid or ESS system. ESS Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Buyer.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices ("**Secondary Metering**") in

addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party shall, at its own expense, inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Secondary Metering, fails to register, or if the measurement made by an Electric Metering Device, or Secondary Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, followed by Secondary Metering to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the

one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

ARTICLE 6
Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this ESA are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

(B) Receipt of approval of the Boards of Directors of Buyer and its parent company, no later than NMPRC Approval.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

ARTICLE 7
Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Party's performance is excused by a Force Majeure Event; (b) a Seller Forced Outage is continuing; (c) a Seller Scheduled Maintenance Outage is continuing; or (d) Seller fails to perform and its failure is excused during Seller Excused Hours. At its sole discretion and cost, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will, at its sole cost, have exclusive rights to offer, bid, or otherwise submit the Product for resale in the market and retain and receive any and all related revenues. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this ESA. During the Term, Buyer shall assume all duties as the scheduling coordinator (or equivalent) in any market in which the Project participates or in which the Product is submitted (including the Western Energy Imbalance Market (EIM)), and Buyer shall be responsible for all costs, fees and charges associated with such participation with the exception of fees or penalties resulting from Seller's breach of this ESA.

7.2 Title and Risk of Loss. Buyer shall be deemed to be in control of all Charging Energy up to delivery, but not including receipt at the Point of Delivery. Seller shall be deemed to be in control of such Charging Energy from and after such delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy

up to the Point of Delivery. Buyer shall be deemed to be in control of such Discharge Energy from and after Seller's delivery and upon Buyer's receipt at the Point of Delivery. Buyer shall retain title and risk of loss for Charging Energy, Energy stored in the ESS, and Discharge Energy at all times. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery unless otherwise provided in Section 11.1.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such Future Environmental Attributes is included in the ESS Payment Rate; and (c) such Future Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this ESA. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, or if any change in 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 ESA in order to deliver the Future Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. 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 Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Discharge Energy and Charging Energy in accordance with NERC/WECC operating polices and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point or Buyer no longer reside in the same market ((i) and (ii) a "Market Event") and such Market Event materially changes the interconnection and delivery requirements in this ESA or has a material adverse effect on either Party, the Parties shall negotiate in good faith amendments to this Agreement to facilitate the delivery of Product from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this ESA to the extent possible.

(C) Seller shall provide to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly ESS availability for the next six (6) Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, 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 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 Seller Excused Hours or a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the 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 Product, 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 material developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

ARTICLE 8
Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Payment. Subject to Section 14.4, Buyer shall pay Seller an amount equal to the product of the (i) ESS Capacity, not to exceed the Guaranteed ESS Capacity, multiplied by the (ii) ESS Payment Rate, multiplied by (iii) Monthly ESS Availability, and multiplied by (iv) the Monthly Hours (the "**ESS Payment**").

Example: For a 30-day month, assuming 98% availability

$$Monthly\ ESS\ Payment\ = 150\ MW\ \times 30\ days\ \times 24\ hours\ \times \$15.40/MWh\ \times 0.98$$

(B) If Supplemental Tax Incentives become available in connection with the Product, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this ESA. At Buyer's option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this ESA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such incentives.

(C) In the event that Seller, an Affiliate of Seller or a Tax Equity Investor, if any, realizes any Supplemental Tax Incentives with respect to the Project, the value of such Supplemental Tax Incentives actually realized will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental Tax Incentives by Seller, Affiliate of Seller, or Tax Equity Investor, Seller will remit to Buyer a payment equal to fifty percent (50%) of the realized value of such Supplemental Tax Incentives.

(D) Buyer shall reimburse Seller for the taxes identified in Section 9.7(A), which shall be included in the monthly invoices in compliance with Section 9.7(A).

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this ESA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(B) to the extent such Supplemental Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this ESA.

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 3.15. From and after the Commercial Operation Date, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show the ESS Payment, information and calculations, in reasonable detail.

(D) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If 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.

(F) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this ESA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. Notwithstanding anything contained in this ESA, all payments to be made by either Seller or Buyer under this ESA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this ESA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the "prime" rate as published in *The Wall Street Journal* on the first business Day of each Month plus one-half percent (0.5%) ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to

and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes charged to Buyer provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with applicable state and tribal laws governing the reporting and payment of Gross Receipts Taxes on those transactions. Buyer shall reimburse Seller for any Gross Receipts Taxes, if any, imposed on Seller's sale of and Buyer's purchase of Product and on Buyer's payment and Seller's receipt of amounts due under this ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this ESA.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this ESA and implement the provisions in this ESA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, copies of any documentation respecting this ESA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this ESA, including Section 9.9 below, all payments between the Parties under this ESA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this ESA, including damages and other payments that are owed by a Party to the other Party pursuant to this ESA. Undisputed and non-offset portions of amounts invoiced under this ESA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this ESA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this ESA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement and this ESA. Seller will be solely responsible for obtaining Tax Benefits, and the ESS Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule in Microsoft Project format within thirty (30) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a 1 Month look-ahead of project activities, with each subsequent monthly update. During the

construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-23-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by Section 62-23-16 of the New Mexico Public Utility Act. If Seller becomes aware of any critical milestone that will not be achieved by the required date, no later than ten (10) Business Days following the originally scheduled date, Seller must provide Buyer written notice and a recovery plan to achieve such milestone and to minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date), a Project Manager reasonably acceptable to Buyer 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 ESA and any documents ancillary hereto, neither this ESA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith, including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this Agreement with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Such Commissioning Test procedures shall meet or exceed the operability performance requirements defined in IEEE Standard 2800-2022 Sections 4. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least thirty (30) Days' prior notice of the approximate test date and ten (10) Days' prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with twenty-four (24) hours advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this ESA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this ESA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA; and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five minute and real time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Discharge Energy delivered by Seller will meet operability performance requirements defined in IEEE Standard 2800-2022, Sections 5 through 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all real time measurement parameters of the Project including individual inverter and system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Sections 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers requirements and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with a ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures.

(A) Seller shall provide Buyer a draft of all Operating Procedures and collaborate with Buyer to finalize mutually agreeable, written Operating Procedures within the timeline defined in Table 2 of Exhibit O. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must operate, maintain and control the Project at all times consistent with the Operating Procedures, the ESA, Prudent Utility Practices, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

(B) Seller will prepare detailed test protocols and procedures for all of the Commissioning Tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be unreasonably denied or delayed.

(C) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and provide the results to Buyer. Seller will have sixty (60) Days from the test date to cure any deficiencies in the test.

(D) In the event of a material adverse change in ESS Unit Capabilities, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the following conditions. Buyer-Requested Performance Tests will be conducted in a manner consistent with the annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F.

(1) If the results of a Buyer-Requested Performance Test fail to meet the Guaranteed ESS Unit Capabilities, ESS Non-Performance Liquidated Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(2) Only two (2) Buyer-Requested Performance Tests may be requested per Commercial Operation Year.

(3) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following Commercial Operation Year. Should Buyer desire to change the reporting dates noted above as a result of Buyer's participation in a regional market or program (including the Western Resource Adequacy Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

With the November 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each Scheduled Maintenance Outage for the Commercial Operation Year will be subject to reasonable approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(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 Product to the Point of Delivery. Upon the written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("Monthly Operational Report") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 Lease Liability Operational Expenses. If the pricing terms and conditions of this ESA would result in Buyer incurring a lease liability greater than zero dollars ($0), then Seller shall provide Buyer, upon Buyer's reasonable request, an approximate percentage, or other information necessary for Buyer to determine an approximate percentage, of the cost of on-going operational expenses for the Project (e.g. cellular augmentation, operations and maintenance costs, property taxes and other such expenses) relative to the ESS Payment Rate for a specified measuring period.

ARTICLE 11
Future Environmental Attributes

11.1 Sale of Future Environmental Attributes. This Article 11 shall apply if and only if Future Environmental Attributes become available.

(A) Other than as specified in Sections 11.1(D) and 11.1(E) below, effective from the date on which the Project first makes Product available to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer no later than five (5) Business Days after the Future Environmental Attributes are available to be transferred in the respective attribute tracking system. The value of the Future Environmental Attributes transferred under this ESA shall be included in the ESS Payment Rate only if Seller is not required to incur additional third-party costs as provided in Section 7.3. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, or if any change in Applicable Law 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 ESA 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 consistent with Section 7.3.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the Future Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Future Environmental Attributes shall include any Future Environmental Attributes that are reserved or "banked" throughout the Term of this ESA, but not used, sold, assigned or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this ESA or any successor provision providing for a federal, state and/or local tax credit or financial benefit determined by reference to renewable electric energy produced from renewable energy resources or the storage of electrical energy shall be owned by Seller.

(E) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to Future Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

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 in Section 12.1(A)(6) and 12.1(A)(7) below:

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this ESA (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 a 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's voluntarily taking advantage of any such law by answer or otherwise;

(4) Except during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other misconduct in connection with this ESA or the operation of the Project;

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

(7) The failure of Seller Guarantor or Seller to make, when due, any payment due to Buyer under or in connection with this ESA, or the failure of any Seller Guarantor to meet the criteria as set forth in the definition of Seller Guarantor if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this ESA); or

(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, except as may be extended pursuant to Section 3.6.

(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 or from a Force Majeure Event, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including, but not limited to, the Interconnection Agreement) required to make Product available at the Point of Delivery;

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

(4) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty-five percent (85%) over any twenty-four (24) consecutive Months during the Term excepting to the extent due to the failure of a main generator step-up transformer (which exception may apply only once during the Term), provided that the 30-Day cure period indicated in Section 12.1(B) does not apply and Seller remediates the cause of the shortfall of Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the eighty-five percent (85%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of a main generator step-up transformer failure of the steps that Seller is taking to remediate the failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving such main generator step-up transformer failure;

(5) Subject to Section 7.3, Seller fails to timely register the Project or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this ESA; or

(6) The Project fails, after the Commercial Operation Date, to achieve ninety percent (90%) of Guaranteed ESS Capacity referenced in Section 3.12, during annual testing pursuant to Section 10.5(C), provided that in no case shall tests be performed when major equipment is not operational.

(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 ESA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18;

(2) Any representation or warranty made by Seller in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on 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 ESA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant Article 18; 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 ESA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within 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 ESA or the operation of the Project; or

(2) Buyer's failure to comply with any other material obligation under this ESA, 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 ESA, except as permitted in accordance with Article 18; or

(3) Any representation or warranty made by Buyer in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an uncured Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this ESA from the Defaulting Party as set forth in Section 12.3(B); (ii) exercise its rights pursuant to Section 12.5; (iii) suspend performance; (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security; and (v) exercise its rights to terminate this ESA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, 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 ESA 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 ESS Costs minus the product of (x) the quantity of Product so replaced (calculated as ESS Capacity multiplied by Guaranteed ESS Availability multiplied by remaining months in the Term), and (y) the ESS 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 Product notwithstanding the availability or prices of electric energy and capacity 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 Future Environmental Attributes that are currently available pursuant to this ESA as of the date of termination of this ESA. 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 Future Environmental Attributes pursuant to this ESA, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which may include Future 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 Product produced by Seller following such Event of Default, plus, to the extent that Seller is unable to produce Product due to the Event of Default of Buyer, an additional quantity equal to the amount of Product that would have been produced by Seller absent such Event of Default of Buyer, each multiplied by the ESS 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 Product 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 uncured 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 ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable

detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of any actual or threatened breach of any material performance obligation of the other Party under this ESA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this ESA shall be cumulative of and shall be in addition to every other right or remedy provided for in this ESA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the

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

12.8 Payment of Amounts Due. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, either Party may send the other Party an invoice for such damages or other amounts as are due to the Party providing the invoice at such time from the other Party under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this ESA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default 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 ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 13
Contract Administration and Notices

13.1 Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered, mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this ESA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this ESA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this ESA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records), but in all cases excluding contracts, agreements, and any confidential or proprietary information unless such disclosure is required by Governmental Authority and subject to the provisions of Section 22.14. All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than three (3) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, dispatch and scheduled Discharge Energy delivered, Charging Energy received, and House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages, but in all cases excluding contracts, agreements, and any confidential or proprietary information unless such disclosure is required by Governmental Authority and subject to the provisions of Section 22.14 ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) quarterly construction progress reports until the start of construction and monthly thereafter in such form as may be agreed to by Buyer in

accordance with Section 10.1(A) and 10.1(B); and (ii) reports of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this ESA; and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this ESA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, but not earlier than forty-five (45) days following the Commercial Operations Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; or (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this ESA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless Seller has defaulted under this ESA, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this ESA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this ESA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

ARTICLE 14
Force Majeure

14.1 Definition.

(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 Execution Date that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not

caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). The Parties agree that a pandemic, including COVID-19, shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this Agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. Notwithstanding any other provision in this ESA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of three hundred sixty five (365) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this ESA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not

relieve the Parties of certain obligations under this ESA (including payment obligations) to the extent that 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 ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event prevents the ability of either Buyer or the Transmission Provider to accept Discharge Energy from the Project or to deliver Charging Energy to the Project or otherwise prevents the ability of the ESS to deliver Product, then the hours during which the Force Majeure Event occurs shall be excluded from the payment calculations as set forth in Section 8.1.

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

(A) Seller is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this ESA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA.

(C) The obligations of Seller under this ESA are valid and binding obligations of Seller.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term that are applicable to Seller's obligations under this Agreement.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any material 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) Subject to Section 7.3, Seller will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

(J) Subject to Section 7.3, Seller has not sold, delivered or transferred the Future Environmental Attributes to any other Person, in whole or in part.

(K) Subject to Section 7.3, all right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(L) Subject to Section 7.3, each Future Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 et seq., and Title 17.9.572 NMAC.

(M) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(N) Except as expressly set forth in this ESA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(O) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this ESA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA.

(C) Assuming this ESA is a valid and binding obligation of Seller, this ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

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 ESA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this ESA shall cover occurrences during the Term of this ESA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by

Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this ESA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer and its Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this ESA is primary and non-contributory with respect to other insurance carried by Buyer.

(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. Seller shall at all times comply in all material respects with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the ESA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this ESA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to,

litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval in connection with (i) the execution and performance of this ESA, including authorization to recover the costs of ESS Payments; and (ii) any waivers as set forth in Buyer's request for approval of this ESA (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to a motion for rehearing or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller 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 ESA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties 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 ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA. If the Parties are unable to mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate ten (10) Days after the date on which the parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(3) If the NMPRC, for any reason, has not issued NMPRC approval for all Requested Actions by September 1, 2025 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date

regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

ARTICLE 18
Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this ESA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this ESA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this ESA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA.

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this ESA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this ESA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this ESA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this ESA with the Affiliate as if such Person had been named under this ESA; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this ESA made without fulfilling the requirements of this ESA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this ESA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. To facilitate Seller's obtaining of financing in connection with the Project, 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, and, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form reasonably 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 ESA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this ESA 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 ESA or provide any consent or enter into any agreement that has a material adverse effect on Buyer, 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 ESA.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this ESA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this ESA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this ESA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed Capacity ("**Development Security"**) within the earlier of (a) ninety (90) Days after the Execution Date and (b) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed Capacity (the "**Delivery Term Security**"). Seller shall replenish the 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 under this ESA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the earlier of (x) the fifteenth (15th) Business Day after termination of this ESA in accordance with its terms; and (y) 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 Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor, 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 five (5) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this ESA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this ESA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this ESA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of the ESA, 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 to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents,

subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received

by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

ARTICLE 21
Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer the Product that are imposed prior to the Point of Delivery or prior to the transfer of the Future Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of the Product that are imposed at and from the taking of the Product by Buyer at the Point of Delivery or at and after the transfer of the Future Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22
Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this ESA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Rate Changes. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this ESA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this ESA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this ESA.

22.5 Relationship of the Parties.

(A) This ESA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform services for Seller, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this ESA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this ESA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the ESA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate

in good faith to attempt to implement an equitable adjustment in the provisions of this ESA with a view toward effecting the purposes of this ESA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this ESA constitute the entire agreement between Buyer and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to approval by any Governmental Authority with jurisdiction over this ESA, this ESA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This ESA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this ESA are for ease of reference only and do not constitute a part of this ESA.

22.12 Counterparts. This ESA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this ESA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this ESA shall be brought in the United States District Court for the District of New Mexico.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "Disclosing Party" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, technical advisors, contractors, consultants, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall

safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care).

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this ESA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Buyer or on Buyer's behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this ESA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this ESA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this ESA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this ESA that relates solely to this ESA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this ESA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information to make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall notify Buyer as soon as reasonably practicable of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("Data Breach") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access. Buyer shall have the right to advertise, market, and promote to the general public the benefits of this ESA, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA (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 make available to Buyer a basic description of the Project and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this ESA and any such mortgage, security interest or

conveyance shall not affect any of Seller's or its Affiliates' financing arrangements or rights or obligations thereunder. 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. Buyer agrees to reimburse Seller for any material costs incurs related to this Section 22.16.

22.17 Forward Contract and Master Netting Agreement. Notwithstanding any other provision of this ESA, the Parties acknowledge that this ESA 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 ESA, that this ESA 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 ESA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the ESA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the 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 Buyers external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section 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 that, based on the advice of its counsel, is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

22.19 Telephone Recording. Each Party to this ESA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this ESA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Change in Market Structure. In the event of a change in the operation or organizational structure of the regional territory which includes the ESS or Buyer's service area (including change in balancing area authority or implementation of an independent system operator, regional transmission organization, or realignment of the transmission system) and such change is reasonably anticipated to affect materially and adversely either Party's ability to perform its obligations hereunder, the representatives of each Party shall convene within fifteen (15) days of written notification from either Party and shall provide recommendations for the Parties' appropriate action. Both Parties thereafter shall negotiate in good faith an amendment to this ESA or take other appropriate actions, the effect of which will be to preserve or restore the respective Parties, as closely as possible, to the same business and economic positions that existed prior to such change.

[Signature page(s) follow]

IN WITNESS WHEREOF, the Parties have caused this ESA to be duly executed as of the date first above written. This ESA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Michael Mertz 8DE1D44E9B1C4ED...

Name Michael Mertz

Title SVP PNM Operations

CORAZON ENERGY STORAGE LLC

By DocuSigned by: Michael Hopkins 8A9166CB30824B4...

Name Michael Hopkins

Title Assistant Secretary

EXHIBIT A
(to Energy Storage Agreement)

DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE

1. Name of Seller's Project: Corazon Energy Storage Project

   Location: Pajarito Road, Albuquerque, NM 87105

2. Owner (if different from Seller): N/A

3. Operator: *To be determined*

4. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage

   b. Total number of units at the Project: 1

   c. Total nameplate capacity (AC): 150 MW

   d. Total capacity at point of delivery: 150 MW

   e. Additional technology-specific information:

5. Project Schedule:

Key Milestone	Date
LGIA Execution	10/25/2024
Major Equipment Supply Agreements Executed	7/1/2025
Discretionary Permits	7/1/2025
Close Financing	8/1/2026
30% Design Complete	11/1/2025
Start of Project Construction	8/1/2026
First Major Equipment Delivered to Site	2/1/2027
Interconnection In-Service Date	7/1/2027
Commissioning Start Date	9/1/2027
Expected Commercial Operation	12/31/2027
Guaranteed Start Date	5/29/2028

6. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the Energy Storage Agreement.

EXHIBIT B
(to Energy Storage Agreement)

ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

1. See attached one-line diagram and communications and telemetry diagram of the Project. The diagrams indicate the following:

   - Interconnection Facilities;
   - the network upgrades;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
   - communications and telemetry configuration with associated redundancy;
   - the House Energy power source and associated dedicated electric meter; and
   - redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is Pajarito 345 kV substation.

EXHIBIT C
(to Energy Storage Agreement)

DESCRIPTION OF SITE
PARCEL SURVEY FOR
CORAZON ENERGY STORAGE PROJECT

[*To be provided*]

SURVEYOR'S DESCRIPTION of:

EXHIBIT D
(to Energy Storage Agreement)

NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

Delivery Address:

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

Invoices:

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email: PNMEAM@pnmresources.com

Scheduling:

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505) 855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

Payments:

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z160
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

CORAZON ENERGY STORAGE

All Notices/Invoices:

Delivery Address:

Corazon Energy Storage LLC
1780 Hughes Landing Blvd
The Woodlands, TX 77380
Attn: Corazon Asset Management
Phone: 832-585-1238

With copy to:
Plus Power – Corazon Legal
1780 Hughes Landing Blvd
The Woodlands, TX 77380
Attn: Legal
Phone: 832-585-1238

Mailing Address (if different from above):

Wire Transfer: To Be Provided

Project Manager: To Be Provided

[●]
Attn: [●]
Address: [●]

Contract Manager:

Public Service Company of New Mexico
Attention: Eric Meadors
2401 Aztec Rd. NE, MS Z120
Albuquerque, NM 87107
Telephone: (505) 241-2179
Fax: (505) 241-2392

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

Public Service Company of New Mexico
Attention: Michael Mertz
414 Silver Ave. SW
Albuquerque, NM 87102
Telephone: (505) 241-0676
Fax: (505) 241-2375

With a copy to:

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS 0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

EXHIBIT E
(to Energy Storage Agreement)

SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

Agency	Permit/Approval/Review	Status
Federal		
U.S. Environmental Protection Agency	NPDES Construction General Permit for Stormwater Discharges from Construction Activities	Notice of Intent to be submitted prior to start of construction
U.S. Army Corps of Engineers	Nationwide Permit under Section 404 of the Clean Water Act	Determination of the need for this authorization will occur during site design of the access road
U.S. Fish and Wildlife Service	Section 7 consultation under the Endangered Species Act	Field surveys scheduled for Q4 2024 to determine if consultation is required
U.S. Environmental Protection Agency	Spill Prevention, Control, and Countermeasure Plan	Plan will be prepared at the time of Project Commissioning
State		
New Mexico Environment Department, Surface Water Quality Bureau Home	Point Source Regulation Section	No separate application required. U.S. EPA will coordinate with NMED directly for the General Permit for Stormwater Discharges from Construction Activities
New Mexico Historic Preservation Division	New Mexico Cultural Properties Act	Confirmation of no impacts to be made prior to submission of Notice of Intent to use the General Permit for Stormwater Discharges from Construction Activities
New Mexico Department of Game and Fish	Nongame and Endangered Species Review	Field surveys scheduled for Q4 2024 to determine if consultation is required
Local		
Bernalillo County	Special Use Permit	Application to be submitted Q4 2024
Bernalillo County	Site Plan, Grading and Drainage, Building Permit	Application to be submitted prior to start of construction
Albuquerque-Bernalillo Air Quality Control Program	Fugitive Dust Control Construction Permit	Application to be submitted prior to start of construction

NOTE: Final actual permit requirements may vary from the above listings due to Code and Regulatory requirements as needed for project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of the Agreement.

EXHIBIT F
(to Energy Storage Agreement)

COMMISSIONING AND ANNUAL TESTS

All tests described in this Exhibit F will be conducted in accordance with equipment manufacturers' recommendations and current test procedures, including performance adjustments based upon ambient conditions. ESS Reliability Testing and Operational Reliability Testing may be run simultaneously.

Commissioning Tests

A. SCADA Functionality Test (or equivalent)
B. Automatic Generation Control (AGC) Functionality Test (or equivalent)
C. Voltage Setpoint Functionality Test
D. Historian and Data Link Functionality Tests
E. ESS Reliability Tests

Commissioning and Annual Performance Tests

A. ESS Unit Capabilities Tests, including:
    - ESS Capacity Test including ESS Roundtrip Efficiency Determination
    - ESS Response Delay Test
    - Frequency Response Capability Test

Commissioning Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

A. SCADA Functionality Test

Purpose:
This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering (POE). This test must be performed prior to energization of the Energy Storage System (ESS).

Procedure:
Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall then contact Buyer's POE Team 4-6 weeks in advance to submit a database modification request (DBMOD) and request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. Testing phases 1-3 (below) require only POE contacts, but phase 4 will also require Buyer's Operator support.

The test shall include, but is not limited to, the following verification:

1) Status points
   - Verify POE is receiving the intended state of Seller's switches and breakers
   - Verify POE can see and change the value of states of Seller's switches and breakers
   - Verify the functionality of the local/remote mode indication status

2) Analog points
   - Verify POE is receiving the intended value
   - Verify POE receives a changed value
   - Verify values have the correct scaling

3) Accumulator points (as applicable)
   - Verify POE is receiving an inserted value
   - Seller reverts to original value then verifies POE receives the new value
   - Verify values have the correct scaling

4) Control points (as applicable)
   - Verify the functionality of all breakers to be controlled by Buyer's POE
   - Verify the functionality of all switches to be controlled by Buyer's POE
   - Verify POE can control all reclosers
   - Verify on-site personnel have capability of changing states and values
   - Verify the functionality of all Setpoints
   - Verify the functionality of all feedback points

Completion of this test will be acknowledged verbally between Buyer's personnel and the stakeholders involved and confirmed thereafter in writing (email is acceptable). This test must be repeated for changes to the states table(s) and/or list of points.

B. Automatic Generation Control (AGC) Functionality Test

Purpose:
This test will demonstrate the ability of the ESS to synch to AGC. This test will occur after the ESS system has energized.

System starting state:
The ESS will be in the on-line state with a SOC between 20% and 80% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("**EMS**") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure:
Prior to testing, the Seller (or its representative) shall contact Buyer's POE Team 4-6 weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or its representative shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour Operational activities.

Remote Mode Testing

Seller will set the ESS to REMOTE mode, and verify the unit accepts AGC.

- Operator will send a setpoint to the unit
- Validate the ESS unit responds to the setpoint
- Operator will send a setpoint above and/or below ESS operation limits
    - Validate the ESS sends alarms
    - Validate the ESS unit does not attempt to charge/discharge to the value sent

Buyer's Operator will set the AGC Control mode to MARKET:
- Validate the ESS unit responds to a DOT from CAISO

Buyer's Operator change the ESS to MARKET in AGC
- Validate the ESS unit changes the control mode
- Validate the ESS unit follows gross MW requested in Planner Pro

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG
- Hold for up to 10 minutes
- Validate the ESS unit responds to ACE of +/- 10 MW

Local Mode Testing
On-site personnel change the ESS to LOCAL mode
- Validate the ESS unit changes from REMOTE to LOCAL mode
- Validate the ESS unit follows gross MW requested on-site
- Validate the ESS unit does not respond to setpoint changes

System end state:
The ESS will be in the on-line state and with control mode set to LOCAL.

C. Voltage Setpoint Functionality Test

[*Test procedures to be agreed upon at a later date, consistent with the timeline set forth in Section 10.2 of the ESA and Tesla's then-current operating and testing requirements*]

D. Historian Data Link Functionality Test

The Historian Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for ESS control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party) and assist as necessary to set up the Historian Data Link.

Seller shall prepare and submit to Buyer a Historian Data Link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Historian Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Historian Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

E. ESS Reliability Testing

E.1 Cycling Reliability

A. Purpose of Test

To demonstrate the ability of the ESS to reliably perform full charging and discharging cycles.

B. Test Procedure

The cycling reliability test shall include the following test elements:

1. the discharging of the ESS from 100% of the Maximum State of Charge to 0% of the Maximum State of Charge followed by;
2. following a prescribed period of "rest" per the OEM guidelines, the charging of the ESS from 0% of the Maximum State of Charge to 100% of the Maximum State of Charge.

C. Test Results

The cycling reliability test shall be satisfied when the ESS successfully performs three (3) full charge and discharge cycles with the ESS control system in auto without any alarms

that indicate an adverse condition that impacts system operations below operating specifications/nameplate, faults, trips, or manual intervention required.

E.2 Operational Reliability

A. Purpose of Test

To demonstrate the short-term reliability of the ESS.

B. Test Procedure

The ESS shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the ESS remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any alarms, faults, trips, or manual intervention required.

Commissioning and Annual Performance Tests

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the ESA) throughout the term of the ESA.

F. ESS Unit Capabilities Testing

F.1 ESS CAPACITY TEST

F.1.1 General

The ESS Capacity Test ("**ESS Capacity Test**" or "**ECT**") is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

F.1.2 Requirements Applicable to all ESS Capacity Tests

A. Purpose of Test. Each ECT shall:

(1) verify compliance with the Guaranteed ESS Capacity;

(2) determine the Roundtrip Efficiency (RTE) of the ESS;

B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

(1) discharge time (minutes);

(2) ESS Charging Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy In");

(3) ESS Discharge Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy Out");

(4) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to the Point of Delivery, in MWh ("Point of Delivery Energy Out");

(5) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh ("Point of Delivery Energy In");

C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

D. Test Elements and Sequence. Each ECT shall include the following test elements:

(1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);

(2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

(3) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;

(4) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity;

(5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until a 100%

State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

(1) General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section F.1.2.F of these ESS Capacity Test Procedures.

(3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.

(4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.

F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section F.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller

is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:

(1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for the ESS Electric Meter Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;

(3) The ESS Capacity as determined by the ECT, including supporting calculations; and

(4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section F.1.2.F of this ESS Capacity Test Procedure.

H. Supplementary ESS Capacity Test Protocol. No later than ninety (90) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the "Supplementary ESS Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh_{AC}) during the first four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA,

multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.

J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh_{AC}) and the ESS Meter Energy In (MWh_{AC}) as below:

$$Roundtrip\ Efficiency\ (\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})} \times 100\%$$

F.2 ESS RESPONSE DELAY TEST

Purpose of Test:

1. Determine the System Charge Latency of the ESS
2. Determine the Charge Ramp Rate of the ESS
3. Determine the System Discharge Latency of the ESS
4. Determine the Discharge Ramp Rate of the ESS

Test Conditions:

The ESS Facility will be in the on-line state at between 20% and 80% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR.

Test procedure:

Measured Charge Latency:

1. Send an active power charge command of PMAX to charge the batteries
2. The time measured from when the ESS receives the PMAX charge command until the power measured at the ESS Electric Metering Device changes from 0 MW to at least 1% of charge PMAX shall be the Actual System Charge Latency

Measured Charge Ramp Rate:

1. Send an active power charge command of PMAX to charge the batteries
2. The differential in MW of ESS Charging Energy divided by the time measured to ramp from 1% to charge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Charge Ramp Rate

Measured Discharge Latency:

1. Send an active power discharge command of PMAX to discharge the batteries
2. The time measured from when the ESS receives the PMAX discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge PMAX shall be the Actual System Discharge Latency

Measured Discharge Ramp Rate:

1. Send an active power discharge command of PMAX to discharge the batteries
2. The differential in MW of ESS Discharge Energy divided by the time measured to ramp from 1% to discharge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate
3. Buyer at its sole discretion may choose to verify the ESS ramp rate capability at a ramp rate value lower than the Guaranteed Discharge Ramp Rate

Determination of ESS Response Shortfall:

The calculation below will demonstrate the determination of the ESS Response Shortfall used to determine ESS Response Shortfall Damages according to Section 3.13. For clarity, any occurrence of an Actual System Charge Latency Shortfall, an Actual System Discharge Latency Shortfall, an Actual Discharge Ramp Rate Shortfall, or an Actual Charge Ramp Rate Shortfall shall be considered an ESS Response Shortfall that shall result in an ESS Response Shortfall Damage in accordance with Section 3.13. An ESS Response Shortfall Damage shall be due for each instance in which any of the following equations result in a positive value.

i. An "Actual System Charge Latency Shortfall" shall be calculated, which shall be equal to:

Actual System Charge Latency Shortfall = Max (Guaranteed System Latency, Actual System Charge Latency) - Guaranteed System Latency

ii. An "Actual Charge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

Actual Charge Ramp Rate Shortfall = Max (Guaranteed Charge Ramp Rate, Actual Charge Ramp Rate) - Guaranteed Charge Ramp Rate

iii. An "Actual System Discharge Latency Shortfall" shall be calculated, which shall be equal to:

Actual System Discharge Latency Shortfall = Max (Guaranteed System Latency, Actual System Discharge Latency) - Guaranteed System Latency

iv. An "Actual Discharge Ramp Rate Shortfall" shall be calculated, which shall be equal to:

Actual Discharge Ramp Rate Shortfall = Max (Guaranteed Discharge Ramp Rate, Actual Discharge Ramp Rate) - Guaranteed Discharge Ramp Rate

For the purposes of these equations Guaranteed Charge & Discharge Ramp Rate shall mean either the Guaranteed values in Section 3.12 or such other Buyer selected lesser ramp rate values per this Section F.2 of this Exhibit F.

F.3 Frequency Response Capability Test

A. Purpose of Test:

Demonstrate that the Energy Storage System is able to react to simulated changes in frequency applied by injecting a Frequency Profile at the Site Controller level.

B. Definitions:

Term	Value/Meaning
Guaranteed PMAX Charge Power	150 MW
Guaranteed PMAX Discharge Power	150 MW
Guaranteed Frequency Response	150 MW / 0.1 Hz
Point of Guarantee	*SEL-735 meter inside Corazon project substation*
Point of Measurement	*SEL-735 meter inside Corazon project substation*
CT Error	[●] %. The CT Error should be the error of the Current Transformer used during the test.
PT Error	[●] %. The PT Error should be the error of the Potential Transformer used during the test.
Meter Error	[●] %. The Meter Error should be the error of the Meter used during the test.
Loss Adjustment Factor	[●] %. The Loss Adjustment Factor shall take into account all electrical losses, including cabling, switchgear, and transformer losses (load and no load) between the Point of Measurement and Point of Guarantee
$FreqLow$	Low Frequency deadband setpoint
$FreqHigh$	High Frequency deadband setpoint
$\Delta FreqLow$	Frequency delta for low frequency
$\Delta FreqHigh$	Frequency delta for high frequency
$\Delta Power\ Low$	Power change for low frequency support
$\Delta Power\ High$	Power change for high frequency support

C. Pre-Test Conditions:

1. Pre-Test ambient conditions will be determined as part of the Commissioning and Test

Procedures to be determined in accordance with Section 10.2 of the ESA.

2. Charge or discharge the Energy Storage System so that its SOE is between 20% and 80%.

3. If a ramp rate is required, the Energy Storage System should be configured with the appropriate ramp rate.

4. The Energy Storage System should report Available Discharge Power that is equal to or greater than the Guaranteed PMAX Discharge Power.

5. The Energy Storage System should report Available Charge Power that is equal to or greater than the Guaranteed PMAX Charge Power.

6. A frequency injection profile shall be applied at the Site Controller in a manner to be determined as part of the commissioning and test procedures. The frequency profile shall be agreed upon between the Parties prior to the test. The Site Controller shall be configured to source the frequency readings from the uploaded profile.

7. The charge portion of the test shall be conducted when energy available from the grid is expected to be greater than the Guaranteed PMAX Charge Power unless specified otherwise by Buyer. The Parties shall ensure that the Energy Storage System is not limited by the grid in its ability to discharge up to the Guaranteed PMAX Discharge Power throughout the duration of the test.

D. Test Procedure:

1. Confirm the Energy Storage System has zero output.
2. Initiate the reading from the Frequency Profile.
3. Wait for the full execution of the profile.

E. Recorded Values:

1. Battery Real Power (MW)
2. Grid Frequency (Hz)

F. Acceptance Criteria:

For each under-frequency event in the profile with a deviation from nominal of Frequency Low Deviation, in steady state:

$$Expected\ Power_{Under\text{-}Freq} * (1 - Meter\ Error) \leq Battery\ Real\ Power \leq Expected\ Power_{Under\text{-}Freq} * (1 + Meter\ Error)$$

Where the expected Energy Storage System response is defined as:

Expected Power$_{Under\text{-}Freq}$
= Min [(Δ*PowerLow* / Δ*FreqLow*) * *Frequency Low Deviation*, *Guaranteed Discharge PMAX*]

Frequency Low Deviation = Simulated Frequency – FreqLow

For each over-frequency event in the profile with a deviation from nominal of *Frequency High Deviation*, in steady state:

Expected Power$_{Over\text{-}Freq}$ * (1 – *Meter Error*) ≤ *Battery Real Power* ≤ *Expected Power*$_{Over\text{-}Freq}$ * (1 + *Meter Error*)

Where the expected Energy Storage System response is defined as:

Expected Power$_{Over\text{-}Freq}$
= Max [(ΔPowerHigh / ΔFreqHigh)* *Frequency High Deviation*, -*Guaranteed Charging PMAX*]

Frequency High Deviation = Simulated Frequency – FreqHigh

G. Grid-Forming Capabilities Tests (*To be finalized at a later date***)**

- Synthetic Inertia
- Voltage Persistence

EXHIBIT G
(to Energy Storage Agreement)

INSURANCE COVERAGES

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

A. Workers' Compensation Insurance, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Technology Errors and Omissions Insurance. Contractor and/or its subcontractors at its sole cost agree to maintain technology Errors and Omissions insurance coverage with insurance carriers with a rating of no less than A rated by Best's Insurance Guide.

Technology Errors & Omissions insurance providing coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright infringement. Technology services shall cover liabilities, punitive damages, and claim expenses arising from acts, errors and omissions, in rendering or failing to render all services and in the provision of all products in the performance of this Agreement, including the failure of products to perform the intended function or serve the intended purpose. Services insured, at a minimum, include (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8)

management, repair and maintenance of computer products, networks and systems (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, (11) violation of federal, state or foreign security and/or privacy laws and regulations including but not limited to investigative and notification costs regardless of whether such incurred costs were compulsory or voluntary and any other services provided by the Contractor under this Agreement. No exclusion/ restriction for unencrypted portable devices/ media may be on the policy. Policy shall have minimum limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations. Such insurance must address all of the foregoing without limitation if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services under this Agreement. The policy shall have worldwide coverage territory and provide coverage for wrongful acts, claims, and lawsuits brought anywhere in the world. Such insurance may be written on a claims-made rather that an occurrence basis as long as the policy, (a) has a retroactive date prior to the date of project commencement, and (b) is maintained by Contractor throughout the performance of Services or storage of data in connection with this Agreement and for at least three (3) years thereafter either through policies in force or through an extended reporting period. Contractor shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Contractor is providing services which provide direct access to Buyer's systems or holding sensitive information of Buyer, then the policy shall include Network Security/Privacy coverage. This policy shall include coverage for loss, disclosure and theft of data in any form; media and content rights infringement and liability, including but not limited to, software copyright infringement; network security failure, including but not limited to, denial of service attacks and transmission of malicious code. Coverage shall include data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally-related crisis management expense for up to one (1) year.

F. Property Insurance. During construction and operation, Seller shall provide or arrange the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. 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, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

EXHIBIT H
(to Energy Storage Agreement)

AVAILABILITY GUARANTEES

Section 1. Definitions.

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

"**Actual ESS Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

"**Annual Report**" has the meaning set forth in Section 2.3 of this Exhibit.

"**ESS Availability Damages**" has the meaning set forth in Section 2.1(B) of this Exhibit.

"**ESS Availability LD Rate**" has the meaning set forth in Section 2.1(B) of this Exhibit.

"**ESS Available Hours**" means for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Year, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Year. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Excused Hours**" means, the aggregate Seller Excused Hours to the extent that the ESS is affected during such hours. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Period Hours**" means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year, provided, that for any leap year, ESS Period Hours means eight thousand seven hundred eighty-four (8,784) hours.

"**ESS Unavailable Hours**" means those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering

Discharge Energy or accepting Charging Energy. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Monthly ESS Availability**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Monthly ESS Available Hours divided by (ii) the Monthly Hours.

"**Monthly ESS Available Hours**" means for a relevant calendar month during any Commercial Operation Year, an amount of hours equal to the difference between (a) Monthly Hours, minus (b) the aggregate ESS Unavailable Hours in such calendar month. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Monthly Guaranteed ESS Availability**" has the meaning set forth in Section 2.1(A) of this Exhibit.

"**Monthly Hours**" means the product of (a) twenty-four (24), multiplied by (b) the number of calendar days in such calendar month.

Section 2. Availability Guarantees.

1. ESS Availability Guarantee.

(A) ESS Availability Guarantee. Seller guarantees that during each calendar month during the Term (prorated for partial months), the ESS shall achieve a Monthly ESS Availability equal to or greater than ninety percent (90%) ("**Monthly Guaranteed ESS Availability**").

(B) ESS Availability Damages. For any calendar month during any Commercial Operation Year during which Seller fails to meet the Monthly Guaranteed ESS Availability, Seller shall pay Buyer liquidated damages in the amount equal to Seven U.S. Dollars and Seventy-Five Cents ($7.70) per MWh ("**ESS Availability LD Rate**") below the Monthly Guaranteed ESS Availability ("**ESS Availability Damages**"). A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

2. 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 Monthly Guaranteed ESS Availability) shall be the payment of damages, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the ESA, 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)(5) of the ESA, as applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the ESA and Seller's material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practices or Seller's failure to pay ESS Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the ESA are an Event of Default of Seller for which Buyer may terminate the ESA and seek damages in accordance with Section 12.4 of the ESA.

3. Annual Report. No later than the tenth (10th) Day of each calendar month during each Commercial Operation Year (or ten (10) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Monthly ESS Availability for the previous calendar month and the ESS Availability Damages, if any, due to Buyer (the "**Monthly Report**"). Such Monthly Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Monthly Report.

5. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the ESA.

ATTACHMENT 1 TO EXHIBIT H

EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES

I. Example of Monthly ESS Availability Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

		Hours
	Monthly Hours ("MH")	720
	ESS Unavailable Hours ("EUH")	86

Given these assumed facts, the Monthly ESS Available Hours for the ESS during the specific calendar month would be calculated as follows:

Monthly ESS Available Hours = MH – EUH: 634 = 720 – 86

Monthly ESS Availability

Given these assumed facts, the Monthly ESS Availability for the Project during the specific calendar month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Sum of Monthly Hours: 720 hours

(c) Monthly ESS Availability: (Sum of Monthly ESS Available Hours/Monthly Hours) x 100 = (634/720) x 100 = 88.1%

II. Example of ESS Availability Damages

Example of ESS Availability Damages based on the following assumed facts:

(a) Seller's Monthly Guaranteed ESS Availability = 90%.

(b) Seller's Monthly ESS Availability = 88.1%.

(c) Seller's Guaranteed ESS Capacity = 150 MW.

Given these assumed facts, Seller calculates the ESS Availability Damages for such calendar month due to Buyer as follows:

(Seller's Monthly Guaranteed ESS Availability – Seller's Monthly ESS Availability) (the latter two expressed as a decimal) x Monthly Hours (assuming a 30-day month) x ESS Availability LD Rate x Seller's Guaranteed ESS Capacity = ESS Availability Damage

(0.90 – 0.881) x 720 x $7.70 x 150 = $15,800.40

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 86 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

EXHIBIT I
(to Energy Storage Agreement)

FORM OF SELLER GUARANTY

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, ____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of *[INSERT COUNTERPARTY'S NAME IN ALL CAPS]* ("**Counterparty**").

RECITALS:

A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain _____ Energy Storage Agreement dated/made/entered into/effective as of _____, 20__ (the "**Agreement**"); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are

deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

(a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.

(b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with *Section 9* below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in *Section 2(b)* above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a limited liability company duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and

(c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing

shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

7. REINSTATEMENT. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

8. TERMINATION. Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [__] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

9. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

TO GUARANTOR: *	TO COUNTERPARTY:
[●]*Attn:* Treasurer	[●]*Attn:*
[Tel: [●] -- for use in connection with courier deliveries]	[Tel: [●] -- for use in connection with courier deliveries]

Any Notice given in accordance with this *Section 9* will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated

recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New 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 J
(to Energy Storage Agreement)

COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by Corazon Energy Storage LLC ("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated October 25, 2024 ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of 150 MW for four (4) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project and that the Project meets, at a minimum, the requirements indicated in items (1) and (3) above.

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

[●]	**[Licensed Professional Engineer]**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
	Date: _____
	License Number and LPE Stamp: _____

EXHIBIT K
(to Energy Storage Agreement)

ROUNDTRIP EFFICIENCY GUARANTEE

Year	Annual R/T Eff
1	85%
2	85%
3	85%
4	85%
5	85%
6	85%
7	85%
8	85%
9	85%
10	85%
11	85%
12	85%
13	85%
14	85%
15	85%
16	85%
17	85%
18	85%
19	85%
20	85%

EXHIBIT L
(to Energy Storage Agreement)

ESS Operating Restrictions

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions:

[*Specific ESS Operating Restrictions will be included as part of the detailed Commissioning and Test procedures to be agreed upon by Buyer and Seller as set forth in Section 10.2 of the ESA and Tesla's then-current operating and testing requirements*]

EXHIBIT M
(to Energy Storage Agreement)

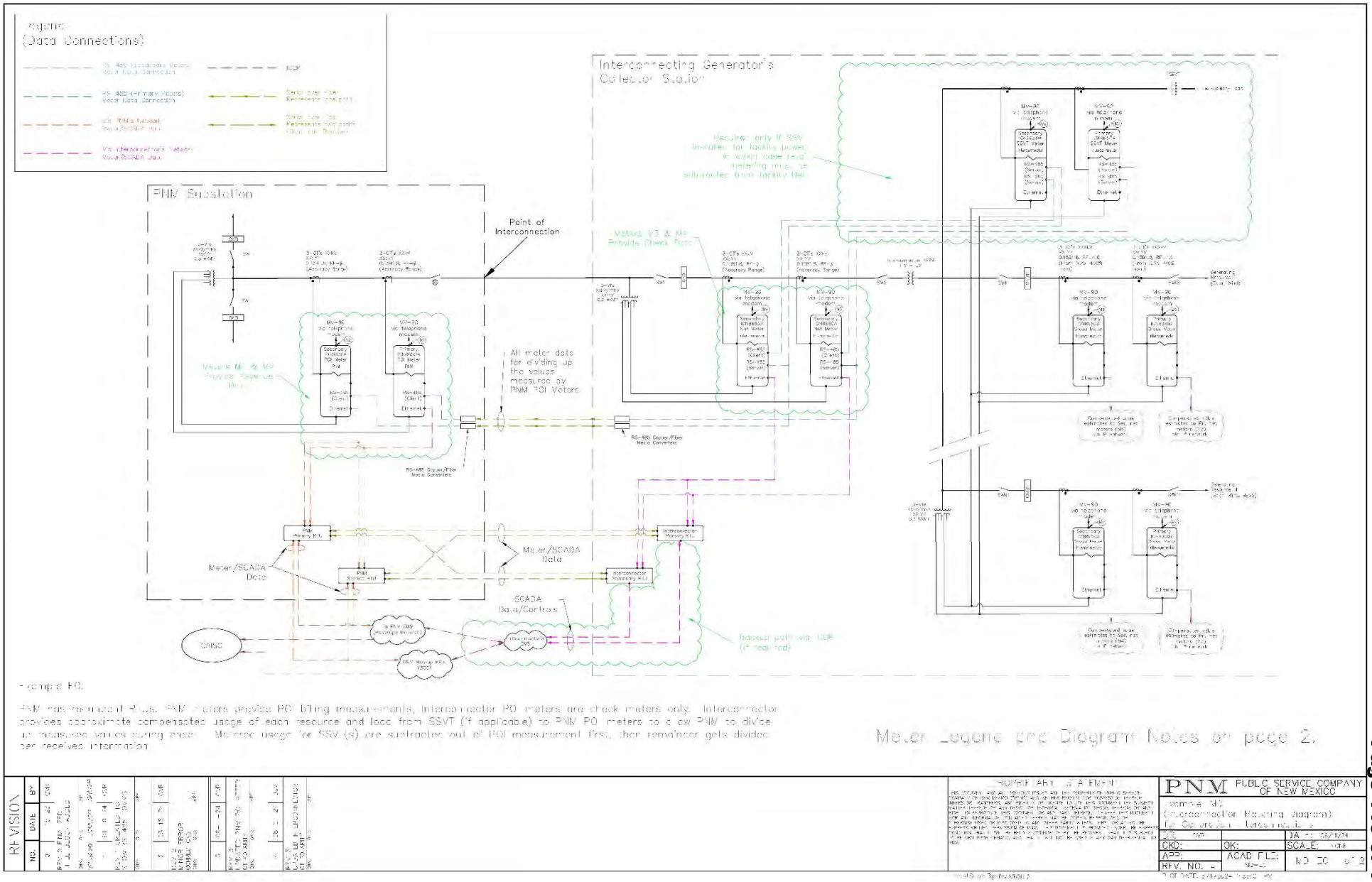
ESS Functional Mapping

The Project's NERC verified ESS Generation Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Scheduling Coordinator Contact (SCC)				

EXHIBIT N
(to Energy Storage Agreement)

Example Interconnection Metering Diagram



Example #3:

PNM has redundant PTMs. PNM meters provide POI billing measurements, Interconnector POI meters are check meters only. Interconnector provides approximate compensated usage of each resource and load from SSVT (if applicable) to PNM POI meters so it can allow PNM to divide up measured values during most. Metered usage for SSV (s) are subtracted out of POI measurement first, then remainder gets divided per received information.

REVISION

PNM PUBLIC SERVICE COMPANY OF NEW MEXICO

(Interconnection Metering Diagram)

Legend (Meters)

Meter	Description	Metering Data Requirments	Output Data
M1	POI Meter (Primary Revenue Meter)	Revenue quality metering data for the After-the-Fact (ATF) metering (MV90) system and awareness at Operations Control Center	MW, Mvar, kV_{LL}, MWH, MVARH
M2	POI Meter (Secondary Revenue Meter)	Revenue quality metering data for the After-the-Fact (ATF) metering (MV90) system and awareness at Operations Control Center	MW, Mvar, kV_{LL}, MWH, MVARH
M3	Facility Net Meter (Primary Check Meter)	Facility net output data to primary RTU for telemetry to Control Center and awareness at Operations Control Center	MW, Mvar, kV_{LL}, MWH, MVARH
M4	Facility Net Meter (Secondary Check Meter)	Facility net output data to primary RTU for telemetry to Control Center and awareness at Operations Control Center	MW, Mvar, kV_{LL}, MWH, MVARH
M5	Gross Meter, Resource 1 (Primary)	Resource gross output data from primary RTU for telemetry to Control Center and awarness at Operations Control Center and revenue quality data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH
M6	Gross Meter, Resource 1 (Secondary)	Resource gross output data from primary RTU for telemetry to Control Center and awarness at Operations Control Center and backup revenue quality data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH
M7	SSVT Meter (Primary)	SSVT Load Data from Primary meter for telemtry to Control center and awareness at Operations Control Center and revenue quality data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH
M8	SSVT Meter (Secondary)	SSVT Load Data from Secondary meter for telemtry to Control center and awareness at Operations Control Center and revenue quality data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH
Mx	Gross Meter, Resource N (Primary)	Resource gross output data from primary RTU for telemtry to Control center and awareness at Operations Control Center and revenue quality data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH
My	Gross Meter, Resource N (Secondary)	Resource gross output telemetry using ICCP or backup RTU to Control center and awareness at Operations Control Center, backup reverue quality data for ATF metering (MV90) system.	MW, Mvar, kV_{LL}, MWH, MVARH

Notes:

1. There must be no single point of failure for the measurement and transmission of real-time metering data to PNM's EMS. This includes networking equipment and communication paths. In the event that real-time metering data becomes unavailable or unreliable, PNM will require that the interconnected generation is disconnected until access to reliable data is re-established.

2. PNM SCADA data to the facility will also include Automatic Generation Control (AGC) setpoints. PNM can also provide to the interconnecting facility SCADA data on the transmission line including: status of the sectionalizing breaker(s), disconnect switch status, and the POI meter data as applicable. A full list of SCADA data to be exchanged will be coordinated between PNM and the interconnector during design for the facilities.

3. MW and MVAR data sent to PNM Operations should follow PNM Operation's convention where wholesale generation is positive and wholesale load is negative.

4. MW and MVAR data sent to and within PNM POI Meters should follow the convention where wholesale generation is negative and wholesale load is positive.

REVISION NO.	DATE	BY	
0	11-15-23	CVR	REV 0 FINALIZED TITLE BLOCK ADDED
1	01-10-24	CVR	REV 1 CREATED TO SHOW RS-485 COMMS
2	03-15-24	CVR	REV 2 MINOR ERROR CORRECTIONS
3	06-11-24	CVR	REV 3 UPDATED PNM POI METER CT POLARITY
4	08-01-24	DJM	REV 3 UPDATED INTERCONNECTOR CT POLARITY

PNM PUBLIC SERVICE COMPANY OF NEW MEXICO

Example IMD (Interconnection Metering Diagram) for Generation Interconnections

DR: CVR		DATE: 08/11/2024	
CKD:	OK:	SCALE: NONE	
APP:	ACAD FILE: IMD-E0	IMD-E0 1 of 2	
REV. NO. 4			

LastSavedBy: DMARQUI2

PLOT DATE: 8/1/2024 1:55:20 PM

EXHIBIT O
(to Energy Storage Agreement)

COMMISSIONING AND TESTING PROCESS

Section 1. Purpose.

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the ESA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Example Interconnection Metering Diagram as outlined in Exhibit N of the ESA and complete all testing as defined in Exhibit F of the ESA.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the ESA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.

CONTACT	Company	Group	Address	Project Role	Office Phone	Mobile Phone	E-MAIL
Eric Meadors	PNM	Generation Contracts & Development	2401 Aztec Rd NE, MS Z120, Albuquerque, NM 87107	Contract Manager	505-241-2179	505-801-7803	Eric.Meadors@pnm.com

The POC List shall identify, but not be limited to, the following:

Buyer Team: Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.
- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.
- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.
- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect ("**PCI**") modeling for functionality required for the participating resource schedule coordination ("**PRSC**") (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.
- Power Operations, "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- Project Manager – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – Shall mean the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.
- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.
- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:
    - Balancing Area Authority (BAA)
    - Transmission Owner (TO)

- Transmission Operator (TOP)
- Generator Owner (GO)
- Generator Operator (GOP)
- Scheduling Coordinator (SC)
- Distribution System Operator (DSO)

Section 3. Process Overview.

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

Section 3.1 Commissioning Kickoff Meeting.

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

Section 3.2 Pre-Commissioning.

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

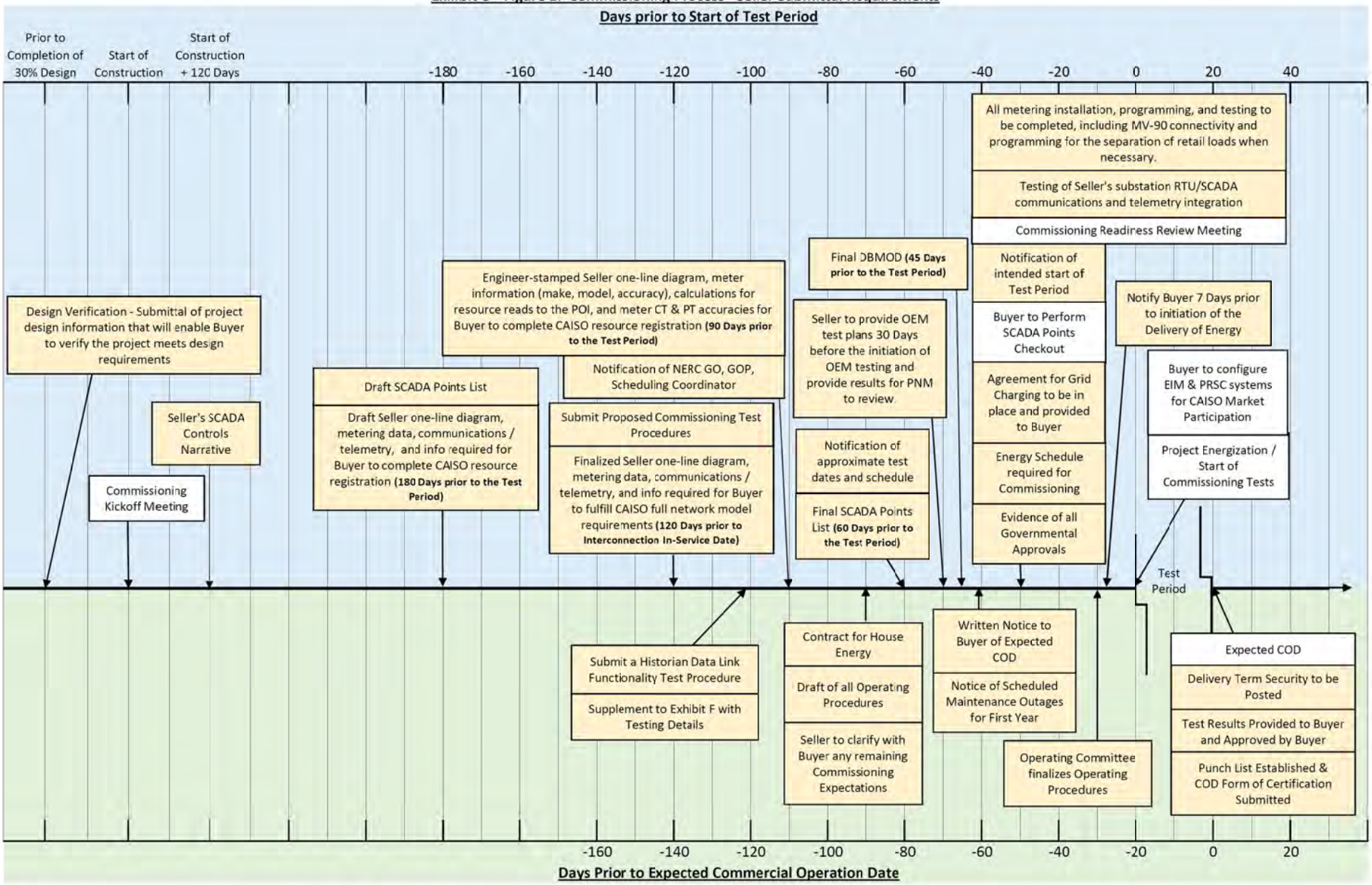
Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1:

TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving ESA obligations, including grid forming inverters, metering, etc.	**Seller**	Generation Engineering	After completion of 30% design phase of project
Seller's SCADA Controls Narrative	Controls narrative detailing items related to SCADA and telemetry planning.	**Seller**	PowerOps	120 Days after Start of Construction
	Final DB Mod file delivered to PowerOps.	**Seller**	PowerOps	45 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing.	**Seller**	Buyer's Project Manager	30 Days prior to the scheduled Test Period
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Example Interconnection Metering Diagram in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	30 Days prior to the scheduled Test Period
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. Delays in Seller's submission to Buyer of this information will likely result in a delay in the transmission interconnection in-service date.	**Seller**	PowerOps	120 Days prior to transmission interconnection in-service date
	Buyer EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps.	**PowerOps**	Seller	
	Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter.	**Seller**	PowerOps	No later than 90 Days prior to the scheduled Test Period
Power Operations Engineering Requirements for Commissioning (Attachment 1)	This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout 30 Days prior to the beginning of the scheduled Test Period.
Power Operations & WPM Systems configuration	EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent ESS resources for CAISO market participation.	**PowerOps & WPM IT Support**	Seller	Prior to the beginning of the scheduled Test Period
Agreement for Grid Charging during testing	During testing/commissioning of facilities, agreements need to be in place with a copy provided to Buyer to allow and plan for grid charging of batteries during the testing process. These agreements will clearly define WPM, GO, GOP or their SC, BA, TO and TOP.	**Seller**	Generation Engineering	Must be complete 30 Days prior to the beginning of the scheduled Test Period.
Operating Procedure	Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering.	**Seller**	PowerOps	90 Days prior to the Commercial Operation Date
	An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system.	**Seller/Buyer**	Seller / PowerOps / Generation Engineering	30 Days prior to the Commercial Operation Date

Requirement	Description	Responsible Party	Contributor(s)	Timeline
OEM Test Plan	The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide manufacturers' test plans and provide results for Buyer to review. Buyer may be an observer for these tests and shall be provided with the results.	**Seller**	Generation Engineering	Test plans required 30 Days before the initiation of the OEM Test Plan, all OEM related testing must be completed prior to declaring COD
Test Energy Plan & Schedule	Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated ESA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans.	**Seller**	Generation Engineering	Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period.
Commissioning Readiness Review Meeting	Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: Attachment 2: Commissioning Readiness Review	**Generation Engineering**	Seller, PowerOps	30 Days prior to the beginning of the scheduled Test Period

Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements



Seller shall submit and be responsible for all items indicated in gold in accordance with the above schedule requirements
Seller shall otherwise support and participate in all identified activities.

Section 3.3 Commissioning.

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the ESA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.

- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Historian Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the ESA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

For Seller's commissioning activities that require Buyer scheduling of energy delivery, Seller's failure to advise Buyer of any change to the planned timing of commissioning activities prior to 48 hours in advance of the change may result in an inability of Seller to conduct testing. Any such delay in commissioning activities as a result of late notification will be to Seller's account.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

Section 3.4 Final Requirements Prior to COD.

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

ATTACHMENT 1 TO EXHIBIT O

BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer 90 Days prior to the beginning of the Test Period:
    a. Nameplate values: MW, MWh, round trip efficiency, etc.
    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.
    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.
    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.
    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.
    d. Telemetry for Seller's substation awareness shall include:
        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - ESS total gross values and total net values (in both MW and MVAr)
                - Gross and net values shall be provided for each resource registered with CAISO
            - Point of Delivery values – MW, MVAr
            - AGC setpoints for ESS and voltage setpoint. As well as the feedback for those setpoints.
            - Total ESS cycle count
            - Total ESS State of Charge (SOC) in both percent and MWH
            - Total real power target
            - Total full charge energy
            - Total nominal energy

- Total energy Rem full power
- Total max charge power

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

ATTACHMENT 2 TO EXHIBIT O

COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. Confirmation that everything is in place to begin testing.
    a. The configuration of the system is stabilized.
    b. All planned preliminary, informal, functional, unit level, subsystem, system, and qualification tests have been conducted with satisfactory results.
    c. Any deficiencies detected in the system have been addressed.
5. The expected result and how might the test evaluation results affect the program.
6. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
7. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and operational testers prior to any test using personnel.
8. The fallback plan should a technical issue or potential showstopper arise during testing.
    a. The test director that will decide if an issue is a showstopper.

A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

Gridworks Contract

PNM Exhibit GBB-5

Is contained in the following 622 pages.

CONFIDENTIAL

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

GRIDWORKS INC.

dated October 29, 2024

TABLE OF CONTENTS

EXHIBITS

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT is made and entered into as of this 29th day of October, 2024 (the "**Effective Date**"), by and between **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation ("**Owner**") and **GRIDWORKS INC.,** a New Mexico corporation ("**Contractor**"). Each entity is sometimes individually referred to herein as a "**Party**" and the entities are sometimes collectively referred to herein as the "**Parties**."

RECITALS

WHEREAS, Owner is developing a photovoltaic power generation facility with a proposed Minimum Gross Capacity of One Hundred (100) MW and an energy storage facility with maximum discharge capability of Thirty (30) MW for Four and 21/100ths (4.21) hours (126.3 MWh), located in San Juan County, New Mexico, as more particularly described herein; and

WHEREAS, Owner desires to engage Contractor to design, engineer, procure, install, construct, test and commission the Project for the Contract Price, and Contractor desires to provide such services, all in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the sums to be paid to Contractor by Owner and of the covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS AND RULES OF INTERPRETATION

1.1. **Definitions.**

For the purposes of this Agreement, the following terms shall have the following meanings:

"**Abandon**" means Contractor's failure or refusal, other than in the event of or resulting from a Force Majeure Event, Change in Law, or Owner-Caused Delay, to continue to diligently pursue or substantially perform the Work for a period longer than thirty (30) consecutive Days and during which period Contractor has, in breach of its obligations under this Agreement: (a) suspended its operations at the Site; (b) reduced personnel at the Site; (c) removed required equipment from the Site; and (d) otherwise conducted its operations such that Contractor would not be capable of maintaining progress sufficient to achieve Substantial Completion of the Project by the Substantial Completion Guaranteed Date.

"**AC**" means alternating current.

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

"**Affiliate**" means, with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is under common control with, or is controlled by such specified Person. For purposes of this definition, "control" means, with respect to any Person, the ability to control, influence or limit, directly or indirectly, the operations, business decisions or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" means this Engineering, Procurement and Construction Agreement, including all Exhibits and attachments hereto, as the same may be modified, amended or supplemented from time to time in accordance with the terms hereof.

"**Aggregate LD Cap**" has the meaning set forth in Section 30.2(e).

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

"**Applicable Law**" means and includes any statute, license, law, rule, regulation, code, ordinance, judgment, injunction, arbitral award, decree, writ, legal requirement or order, of any national, federal, provincial, tribal, state or local court or other Governmental Authority, and the official, written judicial interpretations thereof, applicable to (a) a Project, the Work, the PV Modules, the Site or the Parties; (b) safety or the prevention of injury to persons or the damage to property on, about or adjacent to a Site or any other location where any other portion of the Work will be performed; (c) labor relations, employee relations, employment discrimination, affirmative action, employee benefits, fair labor standards, family and medical leave, immigration, payment of wages, prevailing wages, hours of employment or other terms and conditions of employment; (d) protection of human health or the environment in the performance of the Work; or (e) emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment which are generally recognized as governing the performance of the Work, the Project, or the Site, including, without limitation, ambient air, surface water, groundwater, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, Hazardous Materials or other industrial, toxic materials or wastes, as now or may at any time hereafter be in effect.

"**Applicable Permit(s)**" means each national, state, local or other license, consent, waiver, appraisal, authorization, ruling, exemption, variance, order, judgment, decree, declaration, regulation, certification, filing, recording, permit (including, where applicable, conditional permits) or other approval with, from or of any Governmental Authority, including each and every environmental, construction, operating or occupancy permit, that is required by Applicable Law for the lawful performance of the Work by Contractor or its Subcontractors as set forth in Exhibit C-1 and the Contractor-Acquired Permits set forth in Exhibit C-2.

"Apprentice Requirements" means the apprentice requirements in Sections 48 and 45(b)(8) of the Code and the IRS Guidance.

"**Business Day**" means a day, other than a Saturday or Sunday or a public holiday, on which banks are generally open for the transaction of business in the City of Albuquerque, New Mexico.

"**Capacity LD Cap**" has the meaning set forth in Section 30.2(d).

"**Capacity Liquidated Damages**" means the amount calculated pursuant to Section 15.2.2 by multiplying the Contract Price by a fraction, the numerator of which shall be equal to the difference between the Guaranteed Solar Capacity and the Tested Capacity and the denominator of which shall be equal to the Guaranteed Solar Capacity.

"**Capacity Liquidated Damages Guarantee**" has the meaning set forth in Section 15.2.

"**Change In Law**" means the enactment, adoption, promulgation, modification (including a written change in interpretation by a Governmental Authority), or repeal after the Effective Date of any Applicable Law that materially and adversely affects the Work, including, but not limited to, the imposition of, or any change in the imposition of, any export or import customs and other Taxes, tariffs and duties and other similar charges or fees levied or assessed by any jurisdiction; provided, however, that (a) a change in any national, federal, state or provincial income Tax law (or any other Tax law based on income), shall not be a Change In Law pursuant to this Agreement; and (b) the final enactment, modification, amendment or repeal of an Applicable Law prior to the Effective Date with an effective date of such action that falls after the Effective Date shall not be a Change In Law pursuant to this Agreement.

"**Change In Work**" means a change in the Work as defined in Section 16.1.

"**Change In Work Form**" means the form prepared in respect of a Change In Work in the form attached hereto as Exhibit Q.

"**Charging Energy**" means the amount of Energy supplied by Transmission Provider at Transmission Provider's cost and in accordance with Industry Standards, and delivered to Project at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured by the Electric Metering Devices, accounting for estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Claim Notice**" has the meaning set forth in Section 23.6.

"**Commercially Reasonable Efforts**" means, with respect to any action required to be made, attempted or taken by a Party under this Agreement, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action; and (b) is consistent with Industry Standards and Applicable Law, taking into consideration the costs of such action (including whether such cost is reasonable), the amount of notice of the need to take such action, the duration and type of action and the commercial and regulatory environment in which such action occurs.

"**Commissioning Plan**" has the meaning set forth in Exhibit H-1.

"**Confidential Information**" has the meaning set forth in Section 24.1.

"**Contract Interest Rate**" has the meaning set forth in Section 6.8.

"**Contract Price**" has the meaning set forth in Section 5.1.

"**Contractor**" has the meaning set forth in the preamble and shall include any of its permitted successors and assigns.

"**Contractor-Acquired Permits**" means the permits, approvals, consents and certifications that Contractor is required to obtain for the performance of the Work including those set forth in Exhibit C-2.

"**Contractor Credit Support**" means either the Performance Bond or the Warranty Bond or both of them, as the context requires.

"**Contractor Cure Period**" has the meaning set forth in Section 19.2.

"**Contractor Deliverable**" means all of the deliverables set forth on the Contractor Deliverables Table.

"**Contractor Deliverables Table**" means the table of Contractor Deliverables attached hereto as Exhibit B.

"**Contractor Event of Default**" has the meaning set forth in Section 19.1.

"**Contractor Financing Parties**" means (a) any and all lenders providing senior or subordinated construction, interim or long-term debt financing or refinancing to Contractor or its Affiliates or (b) any Person providing credit support to Contractor or its Affiliates, in each case, in connection with the Project or a portfolio of projects (including any other PV power plant that Contractor is developing for or on behalf of Owner or any Affiliate of Owner), and, in each case, any trustee or agent acting on Contractor's or its Affiliate's behalf.

"**Contractor Hazardous Materials**" has the meaning set forth in Section 27.1.

"**Contractor Indemnitee**" has the meaning set forth in Section 23.3.

"**Contractor Lien**" has the meaning set forth in Section 28.1.

"**Contractor's Invoice**" means an invoice from Contractor to Owner prepared by Contractor and in a form attached as Exhibit S.

"**Contractor's Project Manager**" means the project manager designated by Contractor pursuant to Section 3.4 or any other project manager appointed by Contractor, subject to the consent of Owner, which consent shall not be unreasonably denied or delayed.

"**Contractor's Safety Procedures**" means those procedures and protocols noted on Exhibit D.

"**DC**" means direct current.

"**Defect**" means, as the context requires, any Equipment, engineering, design or installation Work, in each case, that does not conform in any material respect to the standards set forth in this Agreement, the Statement of Work, Applicable Law or the Contractor Deliverables.

"**Defect Warranty**" means the warranties of Contractor under Section 17.1.1.

"**Defect Warranty Period**" has the meaning set forth in Section 17.2.1.

"**Delay LD Cap**" has the meaning set forth in Section 30.2(c).

"**Delay Liquidated Damages**" has the meaning set forth in Section 15.1.

"**Delay Notice**" has the meaning set forth in Section 8.2.1.

"**Design Warranty**" has the meaning set forth in Section 17.1.2.

"**Design Warranty Period**" has the meaning set forth in Section 17.2.2.

"**Discharge Energy**" means Energy discharged from the ESS and delivered to Transmission Provider at the Point of Delivery, as measured by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties.

"**Disclosing Party**" has the meaning set forth in Section 24.1.

"**Dispute**" has the meaning set forth in Section 31.1.

"**Dollars**," "**dollars**" or "**$**" means United States Dollars.

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

"**Electric Metering Device**" has the meaning set forth in Exhibit V.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project.

"**Energy Storage System**" or "**ESS**" means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Equipment**" means the PV Modules and all materials, supplies, apparatus, devices, equipment, machinery, tools, components, instruments and appliances (other than the Owner-Provided Facilities and Services) that are necessary for Contractor's performance of the Work and are to be incorporated into the Project, whether provided by Contractor or any Subcontractor.

"**Equivalent Full Cycle**" means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four and 21/100ths (4.21) hour duration. An Equivalent Full Cycle occurs when the total ESS Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

"**ESS Capacity**" means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for four and 21/100ths (4.21) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit V.

"**ESS Capacity Shortfall Damages**" has the meaning set forth in Section 15.3.

"**ESS Capacity Test**" or "**ECT**" has the meaning set forth in Exhibit V.

"**ESS Commercial Operation**" means that (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis (in accordance with Industry Standards) in accordance with the applicable requirements set forth in Exhibit V on any interconnected system; (b) Contractor has completed three (3) successful start-ups of the ESS in accordance with the applicable requirements set forth in Exhibit V and has been available to dispatch continuously for a period of twenty-four (24) hours with controls in auto and synchronized to the Transmission Provider's system; (c) Contractor has obtained all required consents and approvals from Governmental Authorities necessary for its performance of the Work; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit V or by another method acceptable to Owner; and (e) Contractor has satisfactorily completed the Commissioning Tests identified in Exhibit V in accordance with mutually agreed test procedures and other testing in accordance with interconnection agreement requirements; and (f) Owner has received an officer's certificate from Contractor that the Project has been completed in all material respect.

"**ESS Meter Energy In**" has the meaning set forth in Exhibit V.

"**ESS Meter Energy Out**" has the meaning set forth in Exhibit V.

"**ESS Non-Performance Liquidated Damages**" has the meaning set forth in Section 15.4.

"**ESS Operating Restrictions**" means the operating restrictions of the ESS set forth in Exhibit V.

"**ESS Response Delay**" has the meaning set forth in Exhibit V.

"**ESS Response Delay Damages**" has the meaning set forth in Section 15.4.1.

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the ESS Electric Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit V.

"**ESS Unit Capabilities**" has the meaning set forth in Exhibit A-1, Section 2.15..

"**Event of Default**" means either a Contractor Event of Default or an Owner Event of Default, as the context may require.

"**Excusable Event**" means an event that adversely affects Contractor's performance of the Work, to the extent such event is attributable to: (a) an Unforeseeable Site Condition, (b) a failure or disruption of the Project (or any system thereof) caused by an event (other than a Force Majeure Event, Change In Law or an Owner-Caused Delay) that is external to the Project and beyond the reasonable control of Contractor (such as a grid outage or disturbance), (c) the occurrence of a Change in Law, or (d) the occurrence of an Owner-Caused Delay.

"**Fence**" means the permanent fence for the Site to be provided by Contractor as set forth in Exhibit A-1.

"**FERC**" means the Federal Energy Regulatory Commission.

"**Final Completion**" means satisfaction by Contractor or waiver by Owner of all of the conditions set forth in Section 14.4 for Final Completion of the Project.

"**Final Completion Date**" has the meaning set forth in Section 14.5.

"**Final Contractor's Invoice**" has the meaning set forth in Section 6.9.

"**Final Payment**" has the meaning set forth in Section 6.9.

"**Force Majeure Event**" means any event, act, condition, or circumstance that prevents a Party from timely performing its obligations under this Agreement and that is not within the reasonable control of, or that is not the result of the negligence, willful and wanton misconduct or intentional misconduct of, the claiming Party and that, by the exercise of reasonable due diligence the claiming Party is unable to overcome or avoid or cause to be avoided. Depending on the facts and circumstances, the following may constitute such an event: including war, terrorist act, riots and public disorder, expropriation, confiscation or nationalization, customs detention or impounding, embargos, or port or canal closures, or blockage of exports of essential equipment by any Governmental authorities imposed after the Effective Date; the action or inaction of a Governmental Authority, fire, floods, explosion, epidemic, quarantine, unusually severe weather conditions that prevent or substantially hinder the safe performance of the Work at the Site or the manufacturing or delivery of equipment or supplies necessary for performance of the Work, or other acts of God including natural disasters, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, and landslides; provided, however, that the following shall not constitute a Force Majeure Event:

(a) with respect to Labor Disputes and labor matters, the following shall not constitute a Force Majeure Event: (i) any labor shortage affecting Contractor or any Subcontractor; (ii) any Labor Disputes involving strikes, walkouts, boycotts, or disturbances directed specifically at Contractor or any

Subcontractors; or (iii) any labor disturbances, disputes, boycotts or strikes (whether primary or secondary in nature) involving Contractor or any Subcontractors taking place at the Site, or a facility of Contractor or any Subcontractors;

(b) mechanical or equipment failure (so long as such failure was not itself caused by a Force Majeure Event);

(c) normal climatic conditions based on a twenty-five (25) year daily, weekly or monthly weather event at the Site using data published by the National Oceanic and Atmospheric Administration, and with respect to frozen precipitation, the National Snow and Ice Data Center; and

(d) Owner's inability or failure to pay amounts due under this Agreement or to timely deliver any Owner-Provided Facilities and Services.

"**Functional Test**" means the test to determine the functionality of the PV Power Plant as set forth in the Functional Test Phase description in Exhibit H-2.

"**Governmental Authority**" means applicable national, federal, state, tribal, provincial, and local governments and all agencies, authorities, departments, instrumentalities, courts, tribunals, corporations, other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing having a regulatory interest in or jurisdiction over the Site, the Project, the Work or the Parties, including any non-governmental body administering, regulating or having general oversight over system reliability, safety, the environment, or gas, electricity, or power generation, distribution or transmission, including the North American Electric Reliability Corporation and the Western Electricity Coordinating Council.

"**Guaranteed Charge Ramp Rate**" represents the maximum rate that the ESS can change its input power (in MW per second) as further set forth in Exhibit A-1, Section 2.15.

"**Guaranteed Discharge Ramp Rate**" represents the maximum rate that the ESS can change its output power (in MW per second) as further set forth in Exhibit A-1, Section 2.15.

"**Guaranteed ESS Capacity**" has the meaning set forth in Exhibit A-1, Section 2.15 and represents the amount of energy that the ESS is guaranteed to discharge (in MWh), determined as the product of Guaranteed PMAX and the amount of time the ESS is guaranteed to discharge from the Maximum State of Charge to the Minimum State of Charge at Guaranteed PMAX.

"**Guaranteed ESS Roundtrip Efficiency**" has the meaning set forth in Exhibit A-1, Section 2.15 and is determined in accordance with Exhibit V as the ratio of ESS Meter Energy Out and the ESS Meter Energy In for a full battery discharge and charge cycle.

"**Guaranteed Frequency Response Capability**" represents the guaranteed quality of frequency response from the ESS measured as the MW of power output adjustment capability for every 0.1 Hz of grid frequency deviation as further set forth in Exhibit A-1, Section 2.15.

"**Guaranteed PMAX**" has the meaning set forth in Exhibit A-1, Section 2.15 and represents the amount of power (in MW) that the ESS is guaranteed to discharge for the duration identified in the Guaranteed ESS Capacity.

"**Guaranteed Solar Capacity**" has the meaning set forth in Exhibit H-2.

"**Hazardous Materials**" means any chemical, substance or material regulated or governed by any Applicable Permit, or any substance, emission or material now or hereafter deemed by any Governmental

Authority to be a "regulated substance," "hazardous material," "hazardous waste," "hazardous constituent," "hazardous substance," "toxic substance," "radioactive substance" or "pesticide".

"**Indemnitee**" means an Owner Indemnitee or a Contractor Indemnitee, as the context may require.

"**Industrial Control Systems (ICS)**" means industrial computer.

"**Industry Standards**" means those practices, methods, techniques, standards and acts engaged in or approved by a significant portion of the regulated photovoltaic solar power generation industry in the United States, including the practices, methods, techniques, standards and acts which, in the exercise of reasonable judgment are expected to accomplish the result indicated in the Contract Documents consistent with good business practices, reliability, and safety in connection with the design, supply, construction, start-up, testing, and commissioning, or completion of similar work on projects of the same or similar size and type and at similar locations as the Project and the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from a skilled and experienced licensed engineer or contractor employing generally accepted professional standards with respect to the performance of the Work consistent with Applicable Laws, Applicable Permits, codes and standards, reliability, safety, environmental protection, economy and expediency, and that conform in all material respects to the design, engineering, construction, testing, and other recommendations and guidelines applicable to the Work. Industry Standards is not intended to be the optimum practice, method or acts to the exclusion of all others, but rather is intended to be any of the practices, methods or actions generally accepted in the United States that meet the foregoing standards. To the extent that the standards of construction, workmanship, Equipment and components specified in Exhibit A exceed Industry Standards, then the standards imposed by this Agreement control.

"**Installation Requirements**" has the meaning set forth in Section 17.1.3.

"**Intellectual Property Claim**" means a claim or legal action for unauthorized disclosure or use or infringement of any trade secret, foreign or domestic patent or patent rights, copyright, trademark rights, service mark or other intellectual property (whether or not legally protected or protectable) arising out of Contractor's performance (or that of its Affiliates or Subcontractors) of the Work under this Agreement.

"**Intellectual Property Rights**" means all licenses, trade secrets, copyrights, patents, trademarks, proprietary information or other ownership rights necessary for the ownership, operation, maintenance and decommissioning of the Project.

"**Interconnection Agreement**" means the fully executed Standard Large Generator Interconnection Agreement (LGIA), including any subsequent additions and amendments, between Owner and Transmission Provider, attached hereto in Exhibit A-4, Interconnection Agreement.

"**Interconnection Metering Standard**" means the current metering standards approved by PNM at the start of construction.

"**Interconnection Substation**" means, as set forth in the LGIA, all facilities and equipment described in Appendix A of the LGIA, that are part of the Project and located between the Project and the Point of Interconnection, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Project to the Transmission Provider's Transmission System. With respect to the Project, this includes the generator-tie-in 115kV transmission line and facilities that are designed, engineered, supplied, constructed, tested and commissioned as part of the Work to collect the feeds from the PV Power Plant and the ESS, to transform voltage, by means of two (2) 34.5kV/115kV transformers; and include the appropriate generation-tie-in protective relay equipment, fiber optical cable in conjunction with the transmission line, supporting structures, and all other components as required for electrical interconnection of the Project to the Transmission Provider at the Point of Interconnection / Change of Ownership as shown in Exhibit 3 to Appendix C to the LGIA.

"**Invention**" has the meaning set forth in Section 25.1.

"**Invoice Payment**" has the meaning set forth in Section 6.4.

"IRS" means the Internal Revenue Service or any successor agency.

"IRS Guidance" means IRS guidance for applying the Prevailing Wage Requirements and Apprentice Requirements (including 26 C.F.R. sections 1.45-6, 1.45-7, 1.45-8 and 1.45-12), and any other applicable guidance from the IRS (including any additional guidance in the future from the IRS relating to implementation of the Inflation Reduction Act); provided that if compliance with any future guidance from the IRS increases Contractor's cost of performance or delays Contractor's schedule for performance under the Agreement, Contractor will be entitled to a Change in Work.

"**Issuer**" means a United States surety or a foreign insurer with a United States branch as of the Date of Issuance and for so long as this Bond shall remain in effect, the surety has, and expects to continue to satisfy and maintain, a minimum corporate credit rating of "A-" with A.M. Best, "A-" with S&P, or "A3" with Moody's. Surety shall notify Obligee immediately if its credit rating is decrease.

"ITC" means an investment tax credit under Section 48 or 48E of the Code.

"ITC Recapture Period" means five years starting the day after the Project is placed in service or any subsequent improvement is placed in service for federal income tax purposes.

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

"**kWh**" means kilowatt hour AC unless explicitly referred to as kWh_{DC}.

"**Labor Dispute**" means work stoppages, slowdowns, strikes, disputes, disruptions, boycotts, walkouts and other labor difficulties.

"Laborers or Mechanics" is defined in IRS regulations at 26 C.F.R. Section 1.45-7(d)(8) as updated by any future IRS Guidance.

"Limited Notice to Proceed" or "LNTP" means any notice issued by Owner agreeable to the Parties under which Owner authorizes Contractor to commence the performance of Work prior to the Notice to Proceed Date.

"**Losses**" means, subject to Section 30, any and all actions, suits, judgments claims, demands, costs, charges, expenses, liabilities (including liabilities arising out of the application of the doctrine of strict liability), losses, penalties, injuries, interest or damages, whether arising in equity, at common law, or by statute, or under the law of contract, tort or property, of whatsoever kind and nature, including reasonable attorney fees, court or arbitration costs and fees, expert costs and fees, and expenses and costs of investigation.

"Major Subcontractor" means any Person, including any Supplier, other than Contractor or its Affiliates, that performs Work in excess of Two Hundred Fifty Thousand Dollars ($250,000) in furtherance of Contractor's obligations under this Agreement.

"**Mechanical Completion**" means that the Project is mechanically, electrically and functionally complete and ready for initial operations, adjustment and testing, except for Non-Critical Deficiencies; Mechanical Completion shall not occur before satisfaction of all the following: (a) all systems, including those required for the safe, routine and efficient operation and control have been constructed and commissioned and (b) all systems have been placed into service for the purpose for which the Project is intended.

"**Milestone Item**" means a discrete portion of the Work as set forth in Exhibit G.

"**Minimum Gross Capacity**" means the nameplate rating of the PV Power Plant or ESS as determined by the sum of the AC nameplate ratings of all installed inverters for the PV Power Plant or ESS, in each case without considering generation, transmission or distribution losses.

"**Module Warranty Terms and Conditions**" means the terms and conditions set forth in Exhibit P.

"**Monthly Progress Report**" means a written monthly progress report prepared by Contractor in form and content consistent with Section 7.4, "Progress Reporting", or in a form and content as otherwise directed by Owner.

"**MV**" means medium voltage.

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

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

"**NMPRC**" mean the New Mexico Public Regulation Commission or any successor agency having jurisdiction over Owner and the Project.

"**NMPRC Approval**" means the issuance of a final order by the NMPRC that (a) is no longer subject to legal or administrative appeal; and (b) approves this Contract (i) without materially excluding, limiting or delaying Owner's right to recover from its ratepayers full rate recovery of its costs incurred hereunder or thereunder, (ii) without making such approval subject to material adverse changes to either Party's ability to perform under the Agreement, and (iii) without imposing additional conditions unacceptable to either Owner or Contractor.

"**Non-Critical Deficiencies**" means an item of Work that: (a) Owner or Contractor identifies as requiring completion or containing Defects; (b) does not delay or impede the safe operation of the Project; and (c) does not materially affect the capacity, efficiency, reliability, operability, safety or mechanical or electrical integrity of the Project.

"**Notice**" or "**Notification**" means a written communication between authorized representatives of the Parties required or permitted by this Agreement and conforming to the requirements of Article 29.

"**Notice of Final Completion**" means a Notice from Contractor to Owner stating that Contractor has satisfied the requirements for Final Completion under Section 14.5.

"**Notice of Substantial Completion**" means a Notice from Contractor to Owner stating that Contractor has satisfied the requirements for Substantial Completion under Section 14.3.

"**Notice to Proceed**" or "**NTP**" means a Notice signed by a representative of Owner to Contractor stating that NMPRC Approval and PNM Board of Directors has been received, authorizing Contractor to commence and complete all Work for the Project under this Agreement.

"**Notice to Proceed Date**" means the first Business Day after Owner provides Contractor with the Notice to Proceed for the Project.

"**Notify**" means to provide a Notice or Notification.

"**Operating Personnel**" means the personnel designated by Owner, or by an entity providing operating services for Owner, to operate the Project (including all operators, instrument technicians and supervisors and Owner's contractors (other than Contractor or any Affiliate of Contractor)).

"**Owner**" has the meaning set forth in the preamble and shall include any of its permitted successors and assigns.

"**Owner-Caused Delay**" means, with respect to the Work, a delay in Contractor's performance of any material item of the Work or to the Work Schedule to the extent actually and demonstrably caused by the performance or failure to perform by Owner including but not limited to any failure by Owner to timely approve Contractor's submittals delivered in connection with this Agreement on or prior to the applicable date as provided in this Agreement (unless a deemed response to such notice is provided for hereunder); any interference in the Work by Owner or Owner's Separate Contractor(s); or, a delay of Owner to complete any of the Owner Critical Path Items, including the Owner-Provided Facilities and Services, such that Contractor can obtain back-feed power as required for commissioning of the Project and in compliance with the Work Schedule; or a delay of the Transmission Provider to timely perform the required work under the Interconnection Agreement necessary for Owner to timely complete and interconnect the Project, provided that such delay is not caused by Contractor.

"**Owner Critical Path Items**" means the items identified in Exhibit G as performance obligations of Owner.

"**Owner Directive**" shall have the meaning set forth in Section 16.7.

"**Owner Event of Default**" has the meaning set forth in Section 19.3.

"**Owner Financing Parties**" means (a) any and all lenders providing senior or subordinated construction, interim or long-term debt financing or refinancing to Owner; (b) any and all equity investors in Owner providing tax equity investment or leveraged lease-financing or refinancing (or any other equity investor that makes a capital contribution to Owner in cash or in kind); or (c) any Person providing credit support to Owner, in each case, in connection with the Project or a portfolio of projects (including the PV Power Plant and Energy Storage System) and, in each case, any trustee or agent acting on Owner's behalf.

"**Owner Indemnitee**" has the meaning set forth in Section 23.2.

"**Owner-Provided Facilities and Services**" means, within the parameters set forth on Exhibit A-2, (a) the Transmission Provider's Interconnection Facilities, (b) the Project's rights-of-way and easements, and (c) other items to be provided by Owner pursuant to Exhibit A-2.

"**Owner-Provided Information**" means, with respect to the Project, the information or documentation provided by or on behalf of Owner as set forth in Exhibit A-3.

"**Owner Representative**" means the Owner's representative for the Project(s) designated by Owner pursuant to Section 2.1.

"**Owner's Certificate of Final Completion**" means a certificate of Owner certifying that Final Completion has occurred.

"**Owner's Certificate of Substantial Completion**" means a certificate from Owner certifying that Substantial Completion has occurred.

"**Owner's Engineer**" means any engineering firm or firms or other engineer or engineers (which may be employee(s) of Owner) selected and designated by Owner.

"**Owner's Separate Contractors**" means each contractor or other Person that is in direct or indirect contractual privity with Owner and that performs any work in respect of the Project, but excluding Contractor and each Person in direct or indirect contractual privity with Contractor, including in such exclusion each Subcontractor.

"**Payment Schedule**" means the Payment Schedule attached hereto as Exhibit I.

"**PCS**" has the meaning set forth in Exhibit A-1.

"**Performance Bond**" means a bond in the form attached hereto as Exhibit M, issued by an Issuer in an amount equal to one hundred percent (100%) of LNTP amount, if applicable. Upon issuance of NTP, a Performance Bond equal to twenty percent (20%) of the Contract Price at NTP will be provided, or such other performance security in form, amount and from an Issuer acceptable to Owner. Any performance bond issued in the amount of LNTP is solely for activities described in LNTP.

"**Person**" means any natural person, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, joint venture, firm, unincorporated organization, or any other entity or organization, including any Governmental Authority. A Person shall include any officer, director, member, manager, employee or agent of such Person.

"**Point of Delivery**" or "POD" means, unless otherwise modified in accordance with Article 16 the electric system point at which (a) Transmission Provider delivers Charging Energy to Project, (b) Project delivers Energy to Transmission Provider, and (c) Owner makes the Ancillary Services available to Transmission Provider.

"**Point of Delivery Energy In**" has the meaning set forth in Exhibit V.

"**Point of Delivery Energy Out**" has the meaning set forth in Exhibit V.

"**Power Plant Controller**" or "**PPC**" has the meaning set forth in Exhibit A-1.

"**Point of Interconnection**" or "**POI**" means the point, as set forth in Appendix A to the LGIA, where the Project connects to the Transmission Provider's Transmission System shown in Exhibit 3 to Appendix C to the LGIA.

"**Power Purchase Agreement**" or "**PPA**" means that certain Power Purchase Agreement, dated even date herewith, by and between Public Service Company of New Mexico and Owner, a copy of which was provided to Contractor.

"**Pre-Existing Contamination**" means any Hazardous Materials present at or under the Site, whether introduced before or after the Effective Date, that are not Contractor Hazardous Materials.

"**Preliminary Notice**" has the meaning set forth in Section 28.3.

"Prevailing Wage Certificate" is defined in Section 10.6(e).

"Prevailing Wage Requirements" means the prevailing wage requirements in Sections 48 and 45(b)(7)(A) of the Code and the IRS Guidance.

"Prevailing Wages" means wages (including fringe benefits) at rates not less than the prevailing rates for the PWA Work labor classifications for the locality or localities in which the PWA Work is performed, as published in general wage determinations by the U.S. Department of Labor pursuant to the Davis-Bacon Act at www.sam.gov/content/wage-determinations (or any successor website) or pursuant to a supplemental wage determination by the U.S. Department of Labor.

"**Project**" means the PV Power Plant, Energy Storage System, and the Interconnection Substation.

"**Proposed Punchlist**" has the meaning set forth in Section 14.1.1.

"**Punchlist**" has the meaning set forth in Section 14.1.1.

"**Punchlist Amount**" means the cost or estimated cost to complete any Punchlist item as approved or deemed approved by the Parties.

"PTC Period" means the l0-year period that PTCs will be claimed on the electricity output from the Project.

"PTCs" means production tax credits under Section 45 or 45Y of the Code.

"**PV**" means photovoltaic.

"**PV Capacity Test**" or "**PV Capacity Testing**" means the test described in Exhibit H-2.

"**PV Capacity Test Procedures**" means the written test procedures, standards, protective settings and testing programs for the PV Capacity Test developed pursuant to Section 13.3 and Exhibit H-2.

"**PV Modules**" means the PV modules acquired by Contractor or its Affiliates for the performance of the Work, which will form in part the PV Power Plant.

"PV Module Manufacturer's Installation Manual" means any documentation from the manufacturer of the PV Modules that specifies the appropriate handling and installation methods allowed by the manufacturer of the PV Modules as an acceptable installation method or practice.

"**PV Power Plant**" means, as the context requires, means the One Hundred (100) MW Minimum Gross Capacity solar power plant to be designed, engineered, procured, constructed, tested and commissioned by Contractor under this Agreement (including, the Interconnection Substation) located in San Juan County, New Mexico. The PV Power Plant includes all equipment and systems up to the Point of Interconnection but excludes the Transmission Provider's Interconnection Facilities.

"PWA Work" means the portion of the Work (including any warranty work) that is subject to the Prevailing Wage Requirements and Apprentice Requirements. For the avoidance of doubt, the PWA Work requirements apply to any Laborers or Mechanics employed by Contractor or any of its Subcontractors engaging in construction, alteration or repair at the Project site or any secondary construction site or support site, including transportation of materials or supplies between locations within the Project site and a secondary construction site or dedicated support site and including any warranty repair work or other repair work for which Contractor is responsible under this Agreement.

"Qualified Apprentice" means an individual who is employed by Contractor or any Subcontractor to perform PWA Work at the Site or any secondary construction site or dedicated support site and who is participating in a Qualified Apprenticeship Program.

"Qualified Apprenticeship Program" means a registered apprenticeship program (as defined in 26 C.F.R. section 1.45-8(g)(9)).

"**Receiving Party**" has the meaning set forth in Section 24.1.

"**Remedial Plan**" means a plan prepared by Contractor regarding the actions to be taken and the schedule to remedy failures to meet the Guaranteed Solar Capacity or Guaranteed ESS Capacity for the Project, as submitted to and approved by Owner pursuant to Article 15.

"**Required Manuals**" means operation and maintenance manuals, which are reasonably necessary to safely and efficiently operate, maintain and shut down the PV Power Plant and ESS, as set forth on Exhibit B.

"**SCC**" has the meaning set forth in Exhibit A-1.

"**Site**" means the site of the Project, as more particularly described in Exhibit J.

"**Site Assumptions**" means the assumptions relating to the Site described in Exhibit L.

"**Site Conditions**" means the physical and other conditions at the Site and the surrounding area as a whole, including conditions relating to the environment, transportation, access, waste disposal, handling and storage of materials, the availability and quality of electric power, the availability and quality of water (including raw water), topography, ground surface conditions, subsurface geology, and nature and quantity of surface and subsurface materials (including Hazardous Materials).

"**Site Plan**" means the plan that is part of the design package for the Project to be developed by Contractor as set forth in Exhibit B.

"**Site Safety Officer**" has the meaning set forth in Section 3.12.

"**Solar Cure Period**" has the meaning set forth in Section 15.2, as may be adjusted under this Agreement.

"**Standard Test Conditions**" or "**STC**" has the meaning set forth in Exhibit H-2.

"**Statement of Work**" means the requirements regarding the Work set forth in Exhibit A-1.

"**Subcontractor**" means any Person, including any Supplier, other than Contractor or its Affiliates, that performs any portion of the Work in furtherance of Contractor's obligations under this Agreement.

"**Substantial Completion**" means the satisfaction of all of the conditions for the Project as set forth in Section 14.2.

"**Substantial Completion Date**" has the meaning set forth in Section 14.3.

"**Substantial Completion Guaranteed Date**" means the date which is set forth in Exhibit G as the Project Substantial Completion Date, as such date may be adjusted pursuant to the terms hereof.

"**Successfully Run**" means (a) with respect to the PV Power Plant, that (i) the PV Capacity Test was completed in accordance with the procedures, conditions and requirements for the proper performance of such test set forth in Exhibit H-2, (ii) the results from the PV Capacity Test (taking into account any deviations from the Standard Test Conditions) demonstrate that the PV Power Plant has successfully achieved at least the Guaranteed Solar Capacity as set forth in Exhibit H-2, and (iii) the Functional Test was completed in accordance with the provisions of Exhibit H-2 and demonstrated that the PV Power Plant is capable of producing AC electricity; and (b) with respect to the Energy Storage System, that (i) ESS Capacity Test was completed in accordance with the procedures, conditions and requirements for the proper performance of such test set forth in Exhibit V, (ii) the results from the ESS Capacity Test (taking into account any deviations from the Standard Test Conditions) demonstrate that the Energy Storage System has successfully achieved at least the Guaranteed ESS Capacity as set forth in Exhibit V, and (iii) ESS Unit Capabilities have been verified as meeting the requirements set forth in Exhibit V.

"**Supervisory Control and Data Acquisition System**" or "**SCADA**" has the meaning set forth in Exhibit A-1.

"**Supplier**" means a Person that supplies Equipment directly to Contractor in connection with the performance of the Work.

"**Suspension for Cause**" has the meaning set forth in Section 20.3.2.

"**Suspension for Convenience**" has the meaning set forth in Section 20.3.1.

"**Taxes**" means any and all forms of taxation, charges, duties, imposts, levies and rates whenever imposed by any Governmental Authority, including sales tax, gross receipts tax, use tax, compensating tax, income tax, withholding taxes, corporation tax, franchise taxes, capital gains tax, capital transfer tax, inheritance tax, rates, water rates, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, payroll, social security or other similar contributions, and generally any tax, duty, impost, levy or rate or other amount and any interest, penalty, fine or other amount due in connection therewith.

"Tax Rate" means the combined statutory federal, state and local income tax rate of Owner.

"**Tested Capacity**" means the tested capacity for the PV Power Plant as set forth in Exhibit H-2.

"**Third-party**" means any and all Persons that are not a party to this Agreement and in all cases excluding: (i) Owner Parties; (ii) any other contractors hired by Owner including operation or maintenance contractors of Owner; (iii) any entity (a) with an equity or security interest in Owner, or their assets or property or the Site, or (b) that seeks to claim any rights, power or privileges of Owner, or (c) that seeks to claim as a third party beneficiary of Owner; (iv) no portion of the Work is "Third-party" property for the purposes of indemnification; and (v) any individual or entity in contractual privity with Owner.

"**Transmission Provider**" has the meaning set forth in Exhibit A-1.

"**Transmission Provider's Interconnection Facilities**" or "**TPIF**" means, as set forth in the LGIA, all facilities and equipment owned, controlled or operated by the Transmission Provider from the transmission system up to the Point of Interconnection as identified in Appendix A to the LGIA and shown in Exhibit 3 to Appendix C to the LGIA, including any modifications, additions or upgrades to such facilities and equipment.

"**Unforeseeable Site Conditions**" has the meaning set forth in Section 12.1.

"**Unforeseen Protected Flora and Fauna**" means flora and fauna present at the Site which is subject to protection, restriction, special treatment or otherwise addressed under Applicable Laws, including the Endangered Species Act, the presence and specific location of which is not disclosed in the Owner-Provided Information.

"**United States**" means the United States of America.

"**Waiver and Release Upon Final Payment**" means a written statement of Contractor substantially in the form attached hereto as Exhibit F-1.

"**Waiver and Release Upon Progress Payment**" means a written statement of Contractor substantially in the form attached hereto as Exhibit F-2.

"**Warranty**" means the Defect Warranty or the Design Warranty, as the context requires.

"**Warranty Bond**" means a bond in the form attached hereto as Exhibit M, issued by an Issuer in an amount equal to ten percent (10%) of the Contract Price, or such other performance security in form, amount and from an Issuer acceptable to Owner.

"**Warranty Period**" means the Defect Warranty Period or the Design Warranty Period, as the context requires.

"**Work**" means all of Contractor's obligations set forth in Exhibit A-1.

"**Work Schedule**" means the work schedule for the Project, attached as Exhibit G, describing the time of completion by Contractor of the Milestone Items and describing the time of completion by Owner of the Owner Critical Path Items.

1.2. **Exhibits.**

This Agreement includes the Exhibits annexed hereto and any reference in this Agreement to an "Exhibit" by letter designation or title shall mean one of the Exhibits identified in the table of contents or otherwise identified in this Agreement and such references shall indicate such Exhibit herein. Each Exhibit attached hereto is incorporated herein in its entirety by this reference.

1.3. **Interpretation.**

(a) Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Agreement with initial capitals in another number, tense or form. The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both genders as the context requires. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(b) The terms such as "hereof," "herein," "hereto," "hereinafter" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole.

(c) When a reference is made in this Agreement to an Article, Section, subsection, preamble, recital, schedule or Exhibit, such reference is to an Article, Section, subsection, preamble, recital, schedule or Exhibit of this Agreement unless otherwise specified.

(d) The word "include," "includes," and "including" when used in this Agreement shall be deemed to be followed by the words "without limitation," and, unless otherwise specified, shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term "or" is not exclusive.

(e) A reference to any Party to this Agreement or any other agreement or document shall include such Party's predecessors, successors and permitted assigns.

(f) The Parties have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof.

1.4. **Headings.**

All headings or captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

1.5. **Conflicts in Documentation.**

This Agreement, including the Exhibits hereto, shall be taken as mutually explanatory. If either Party becomes aware of an express conflict between the provisions of this Agreement or any Exhibit hereto, such Party shall immediately Notify the other Party of such conflict. In the event of a conflict between any provision within Articles1 through 32 of this Agreement and an Exhibit, the provisions of Exhibits A and H shall take precedence over Articles 1 through 32 of this Agreement, which articles shall in turn take precedence over

the remaining Exhibits.

1.6. **Documentation Format.**

This Agreement and all documentation to be supplied hereunder shall be in the English language and all units of measurement in the design process, specifications, drawings and other documents shall be specified in dimensions as customarily used in the United States.

2. RESPONSIBILITIES OF OWNER

Owner shall, at Owner's cost and expense:

2.1. **Owner Representative.**

Designate (by a Notice delivered to Contractor) an Owner Representative, who shall act as the single point of contact on behalf of Owner with respect to the prosecution and scheduling of the Work and any issues relating to this Agreement. Owner may designate a new Owner Representative from time to time by a Notice delivered to Contractor.

2.2. **Operating Personnel.**

Provide Operating Personnel with requisite plant operating experience to provide operating support to Contractor for the testing and commissioning of the PV Power Plant as provided in Section 3.18.

2.3. **Applicable Permits.**

Fully comply with Applicable Laws and obtain and comply with all Applicable Permits, including those set forth in Exhibit C-1, but excluding the Contractor-Acquired Permits. Owner shall provide such reasonable non-financial assistance as Contractor may reasonably request in connection with obtaining any Contractor-Acquired Permits promptly after Contractor's request.

2.4. **Owner-Provided Information.**

Provide the Owner-Provided Information and all information required to be provided by Owner pursuant to Exhibit A-3 for the Project to Contractor on or prior to the applicable date set forth on Exhibit A-3.

2.5. **Owner's Separate Contractors.**

Retain, at Owner's sole cost, determination and responsibility, Owner's Separate Contractors.

2.6. **Access to Site.**

Provide, as of the Notice to Proceed Date for the PV Power Plant, reasonable access to the Site for the PV Power Plant Work. Contractor shall comply with Contractor's Safety Procedures and with reasonable security procedures (if any) to the extent Owner has provided such security procedures to Contractor.

2.7. **Cooperation.**

Cooperate and cause Owner's Separate Contractors to cooperate with Contractor and the Subcontractors who may be working at or near the Site.

2.8. **Interconnection.**

Without limiting Contractor's responsibility for the performance of the Work hereunder, Owner shall make all arrangements with the Transmission Provider and the other parties to the Interconnection Agreement as required under the Interconnection Agreement and not included in the Work hereunder to permit the tie-in

and interconnection of the Project to the applicable transmission grid**.** Contractor shall provide reasonable assistance to Owner, at no additional cost, to facilitate all arrangements with the Transmission Provider and the other parties to the Interconnection Agreement, when and as reasonably requested by Owner.

2.9. **Owner Parent Guaranty.**

Simultaneously with the execution of this Agreement, Owner shall deliver to Contractor a guaranty of Owner's performance of its obligations under this Agreement duly executed by Public Service Company of New Mexico, in the form attached hereto as Exhibit W.

2.10. **Other Owner Responsibilities.**

Owner shall perform its other duties and responsibilities set forth in this Agreement, including Exhibits A-2, G and I.

3. RESPONSIBILITIES OF CONTRACTOR

Contractor shall:

3.1. **General.**

Perform (or cause to be performed through Subcontractors), furnish and be responsible for all of the Work. Contractor acknowledges and agrees that this Agreement constitutes a fixed price (subject to the terms hereof) obligation to engineer, design, procure, construct, test and commission the Project.

3.2. **Performance of Work.**

Perform and complete all of the Work in accordance with the terms of this Agreement, the Power Purchase Agreement, Applicable Law and Industry Standards. Contractor shall provide, or cause to be provided through Subcontractors, all necessary labor and supervision to perform the Work.

3.3. **Design and Construction of the Project.**

Design, engineer and construct the Project so that it meets the requirements of the Contractor Deliverables, and is capable of operation in compliance with Industry Standards and Applicable Laws in effect at the time of the Substantial Completion.

3.4. **Contractor's Project Manager.**

Designate (by a Notice delivered to Owner within two (2) Business Days after the issuance of the Notice to Proceed under this Agreement) a Contractor's Project Manager who shall have full responsibility for the prosecution of the Work and shall act as a single point of contact in all matters on behalf of Contractor. Contractor may designate a new Contractor's Project Manager from time to time by a Notice delivered to Owner, subject to Owner's prior written consent, which consent shall not be unreasonably denied or delayed. At all times when Work is in progress at the Site, Contractor's Project Manager or its authorized nominee shall be on Site so as to properly supervise the Work in progress. Contractor's Project Manager shall be deemed to have full authority to act on behalf of Contractor. Notices given by Owner in writing to Contractor's Project Manager shall be deemed as having been given to Contractor.

3.5. **Utilities and Services.**

3.5.1. Provision of Services.

Install, connect and maintain at its own expense during its performance under this Agreement,

all utilities, facilities and services, as set forth in Exhibit A-1 (other than the Owner-Provided Facilities and Services) required for the performance of the Work.

3.5.2. Payment.

Pay when due all construction utility usage charges and arrange with local authorities and utility companies having jurisdiction over the Site for the provision of utilities other than or in excess of the utilities provided as part of the Owner-Provided Facilities and Services.

3.5.3. Supply of Construction Facilities.

Other than the Owner-Provided Facilities and Services, , obtain all supplies or services required for the performance of the Work but which do not form a permanent part of the completed Work.

3.6. **Inspection.**

Perform all inspection and other like services required for performance of the Work, including inspecting all Equipment.

3.7. **Organization.**

Maintain staff that are dedicated to the completion of the Work, and that have the technical and managerial expertise to control and execute the Work in accordance with the requirements of this Agreement. Contractor shall notify Owner prior to taking any action with respect to any Labor Dispute involving any labor union affecting Contractor's performance of the Work at the Site or surrounding area.

3.8. **Contractor-Acquired Permits; Assistance with Owner-Acquired Permits.**

Prepare, apply for, obtain and maintain all Contractor-Acquired Permits. Contractor shall provide such assistance as Owner may reasonably request in connection with obtaining Owner-acquired permits promptly after Owner's written request.

3.9. **Hazardous Materials Disposal System.**

To the extent required by Applicable Law, prepare and maintain accurate and complete documentation of all Contractor Hazardous Materials used by Contractor or Subcontractors at the Site in connection with the Work, and of the disposal of any such materials, including transportation documentation and the identity of all Subcontractors providing Hazardous Materials disposal services to Contractor at the Site. Copies of all documentation required under this Section 3.9 shall be timely provided to Owner upon Owner's reasonable written request.

3.10. **Maintenance of Site.**

Maintain the Site clear of debris, waste material and rubbish. Contractor shall dispose of such debris, waste material and rubbish in accordance with Applicable Law.

3.11. **Site Security.**

Until Final Completion, provide all necessary and reasonably appropriate site security at the Site for the protection of the Work.

3.12. **Safety.**

During the performance of the Work at the Site, be responsible for the safety oversight of the Persons at the Site and for the safe performance of the Work at the Site, in each case in accordance with Owner's and Contractor's Safety Procedures. By written Notice to Owner prior to commencement of the

Work at the Site, Contractor shall designate an officer who shall be responsible for safety issues at the Site ("**Site Safety Officer**"), and Contractor shall ensure that a Site Safety Officer for the Site is designated at all times from the commencement of the Work until Final Completion.

3.13. **Shipping and Storage.**

Arrange for complete handling of all Equipment and Contractor's construction equipment, including quality assurance, shipping, loading, unloading, customs clearance, receiving, any storage required to be provided by Contractor hereunder and claims. In connection with the shipping and storage of all Equipment and Contractor's construction equipment, Contractor shall comply with all relevant manufacturers' requirements in respect of any applicable manufacturer's warranty. Contractor's damage reports describing any damage to Equipment and Contractor's construction equipment during shipping, loading, unloading, customs clearance, receiving and storage shall be available to Owner upon written request.

3.14. **Compliance with Applicable Laws.**

3.14.1. During and in connection with the Work, comply, and cause its Subcontractors to comply, with all Applicable Laws relating to the performance of the Work.

3.15. **Quality Assurance Programs.**

Use effective quality assurance programs throughout the performance of the Work. Prior to commencement of the Work, Contractor shall provide Owner with written copies of its quality assurance programs applicable to the performance of the Work. By written Notice to Owner prior to commencement of the Work for the PV Power Plant and ESS, Contractor shall designate one or more officers who shall be responsible for quality assurance/quality control issues, and Contractor shall ensure that such an officer is designated at all times from the commencement of the Work until Final Completion. Contractor quality control/quality assurance inspection reports, including reports on inspections of material delivery, shall be available to Owner upon written request, and copies of all such inspection reports shall be provided to Owner as part of the Contractor Deliverables.

3.16. **Contractor Deliverables.**

Issue Contractor Deliverables for Owner review in accordance with Exhibit B.

3.17. **Training of Operating Personnel.**

Commencing no later than two (2) weeks prior to the then anticipated Substantial Completion Date, train, or where applicable cause the Subcontractors to train, the designated Operating Personnel in the requirements for the operation of, and safety, general process understanding and procedures for the Project in accordance with the requirements set forth in Exhibit E.

3.18. **Commissioning Personnel.**

Provide or cause to be provided, experienced installation and commissioning representatives from the Suppliers specified in Exhibit K, together with all necessary supervising personnel, all equipment, tools, construction and temporary material and all other labor necessary for all of the Work to complete commissioning.

3.19. **Contractor Performance Security.**

3.19.1. Performance Bond.

Provide, or cause to be provided, a Performance Bond within ten (10) business days after Owner issues the Limited Notice to Proceed. Provide or cause to be provided at the time Owner issues the

Notice to Proceed provided that Owner has provided thirty (30) days' prior written notice of the requirement to provide Contractor Credit Support, the Performance Bond to guarantee the performance of Contractor's obligations hereunder. Contractor shall maintain, or cause to be maintained, the Performance Bond until the Final Completion Date. Subject to any claims made in writing by Owner to Issuer under the Performance Bond prior to the Final Completion Date, the Performance Bond shall terminate and shall cease to be of any force or effect upon Final Completion; and

3.19.2. Warranty Bond.

Provide, or cause to be provided, no later than the Final Completion Date, the Warranty Bond to guarantee the performance of Contractor's warranty obligations hereunder. Contractor shall maintain, or cause to be maintained, the Warranty Bond until the later of the demonstration by Contractor that the PV Capacity Test and ESS Capacity Test conducted pursuant to Section 14.8 have been Successfully Run or one hundred eighty (180) days after the expiry of the Defect Warranty Period. Subject to any claims made in writing by Owner to Issuer under the Warranty Bond prior to its termination, the Warranty Bond shall terminate and shall cease to be of any force or effect upon the later of demonstration by Contractor that the PV Capacity Test and ESS Capacity Test conducted pursuant to Section 14.8 have been Successfully Run or one hundred eighty (180) days after termination of the Defect Warranty Period, as may be extended pursuant to this Agreement.

3.20. **Other Contractor Responsibilities.**

Perform its other duties and responsibilities set forth in this Agreement, including Exhibits A-1, B, C-2, D, E, G, H-1, H-2 and V.

3.21. **Price Allocation Schedule.**

No later than sixty (60) days prior to the anticipated achievement of Substantial Completion, provide a price allocation schedule for the Work and other information reasonably necessary for Owner to maintain segregated accounts for its tax records and fixed asset records (including any Federal Energy Regulatory Commission accounting requirements). Contractor shall provide an updated price allocation schedule for the Project prior to Final Completion.

4. COVENANTS, WARRANTIES AND REPRESENTATIONS

4.1. **Representations and Warranties of Contractor.**

Contractor represents and warrants as of the Effective Date that:

4.1.1. Organization, Standing and Qualification.

Contractor is a corporation, duly organized, validly existing and in good standing under the laws of the State of New Mexico, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing under the laws of each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

4.1.2. Due Authorization; Enforceability.

Contractor has taken all necessary corporate action to authorize, effect and approve this Agreement and this Agreement has been duly authorized, executed and delivered by or on behalf of Contractor and is, upon execution and delivery, the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable

bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

4.1.3. No Conflict.

The execution, delivery and performance by Contractor of this Agreement will not conflict with or cause any default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other similar agreement or instrument to which Contractor is a party or by which it or its properties may be bound or affected; or (c) any Applicable Laws, and will not subject the PV Power Plant or the Project or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement.

4.1.4. Government Approvals.

Neither the execution nor delivery by Contractor of this Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority other than with respect to Contractor-Acquired Permits.

4.1.5. No Suits, Proceedings.

There are no actions, suits, proceedings, patent or license infringements, or investigations pending against it in writing at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on Contractor's ability to perform its obligations under this Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

4.1.6. Business Practices.

Neither Contractor nor any of its Representatives has made any payment or given anything of value, and Contractor covenants that it will not make any payment or give anything of value, in either case to any government official (including any officer or employee of any Governmental Authority) to influence his, her or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor shall follow Contractor's Code of Business Conduct and Ethics policy with respect to all of the Work. None of Contractor nor any of its employees or agents shall intentionally take any action with respect to this Agreement or any of the Work that violates any Applicable Laws concerning corrupt practices. Contractor shall promptly Notify Owner of any violation of this covenant.

4.1.7. Owner-Provided Information.

Contractor is entitled to rely on the accuracy and completeness of the Owner-Provided Information. Contractor acknowledges that Owner shall not make any other representation or warranty with respect to the accuracy or completeness of documents or information (including oral statements) or opinions expressed by Owner. Except for the Owner-Provided Information, Contractor will not rely on Owner for any information, data, inferences or conclusions, or other information with respect to any Site Conditions, including the surface conditions of the Site and the surrounding areas.

4.1.8. Legal Requirements.

Contractor has knowledge of all of the Applicable Laws that must be followed in performing the Work, and covenants that the Work shall be performed in compliance with all Applicable Laws.

4.1.9. Licenses.

Contractor and its Subcontractors and their respective employees who will perform any portion of the Work have and will have all necessary qualifications, certifications and licenses required by Applicable Law to perform the services under this Agreement.

4.1.10. Skills and Knowledge.

Contractor has performed work similar in kind, size and complexity to the Work and possesses the specific training, skills, knowledge, necessary personnel and legal right to perform the Work. Contractor shall provide, in connection with the Work, the standard of care, skill, and diligence normally provided by an experienced contractor in the performance of work similar to the Work and warrants that all such Work shall be performed in accordance with Industry Standards and all Applicable Laws.

4.1.11. Means and Methods.

Contractor shall be responsible for all means, methods, techniques and procedures for performing the Work, and for coordinating all portions of the Work under this Agreement.

4.1.12. Independent Contractor.

Contractor represents that it is an independent contractor, and agrees and understands that neither it nor any of its officers, directors, Affiliates, agents, employees, Subcontractors or Suppliers may act in the name of Owner.

4.1.13. Financial Condition.

Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required under this Agreement.

4.2. **Representations and Warranties of Owner.**

Owner represents and warrants that:

4.2.1. Organization, Standing and Qualification.

Owner is a corporation duly formed, validly existing, and in good standing under the laws of the State of New Mexico, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business Owner presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing in each jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

4.2.2. Due Authorization; Enforceability.

Owner has taken all necessary corporate action to authorize, effect and approve this Agreement and this Agreement has been duly authorized, executed and delivered by or on behalf of Owner and is, upon execution and delivery, the legal, valid, and binding obligation of Owner, enforceable against Owner in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

4.2.3. No Conflict.

The execution, delivery and performance by Owner of this Agreement will not conflict with or cause any default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage,

deed of trust, lease, conditional sales contract, loan or credit arrangement or other similar agreement or instrument to which Owner is a party or by which it or its properties may be bound or affected; or (c) any Applicable Laws.

4.2.4. Governmental Approvals.

Applicable Permits, set forth in Exhibit C-1, either have been obtained by Owner and are in full force and effect on the Effective Date or will be obtained and will be in full force and effect on or prior to the date on which they are required, under this Agreement and Applicable Law. As used in this Section 4.2.4, Applicable Permits does not include FERC or NMPRC Approvals.

4.2.5. No Suits, Proceedings.

There are no actions, suits, proceedings or investigations pending or, to Owner's knowledge, threatened against it in writing at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on Owner's obligations under this Agreement. Owner has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

4.2.6. Land.

Owner holds good and valid title in fee simple in respect of the Site which is sufficient for the execution of the Work and will provide Contractor and its Subcontractors and suppliers with access necessary to the Site to perform the Work in accordance with the Work Schedule.

5. COST OF WORK

5.1. Contract Price.

Contractor hereby agrees to accept as compensation for the performance of the Work $184,964,571.00 (the "**Contract Price**"). Neither shall the Contract Price be changed nor shall Contractor be entitled to any other compensation, reimbursement of expenses or additional payment of any kind without prior written authorization of Owner or unless otherwise specifically set forth in this Agreement (including the Tesla Lithium Indexation Formula, Assumptions and Illustrations, attached as Exhibit Z, Article 8 and Article 16). Payments shall be made at the times and in the manner provided in Article 6. For the avoidance of doubt, the Contract Price does not include any New Mexico gross receipts, compensating, sales, and other similar Taxes, and any Taxes imposed under Applicable Law. In the event that Owner provides a Non-Taxable Transaction Certificate, or other suitable form of exemption from, or deduction of, New Mexico gross receipts, compensating, sales or similar Taxes, then Contractor will not collect any such taxes from Owner.

5.2. Taxes.

5.2.1. Reporting and Payment.

Contractor shall timely report and pay all Taxes and contributions for unemployment insurance, old age retirement benefits, pensions, annuities, and similar benefits, which may now or hereafter be imposed on Contractor by law or collective bargaining agreements with respect to persons employed by Contractor for performance of the Work. Subject to the following sentence of this Section 5.2.1, Contractor shall be liable for and shall pay and shall indemnify, defend, and hold harmless Owner, and its Affiliates and its or their respective Representatives from and against any and all such Taxes and contributions or any interest accrued and penalties imposed, and reasonable attorney's fees (including income, margin, franchise, withholding, gross receipts, compensating, sales, use, property and all other Taxes of whatsoever kind and whatsoever nature), excises, assessments, and other charges levied by any governmental agency or authority

on Contractor with respect to its performance of the Work, or on any materials, equipment, services, or supplies furnished in the performance of the Work. On all invoices, Contractor shall separately show all New Mexico gross receipts, compensating, sales, and other similar Taxes, provided that in no event will interest or penalties on such Taxes be reimbursable by Owner. Contractor shall also separately itemize services performed outside the State of New Mexico, if any. Contractor shall utilize appropriate New Mexico Nontaxable Transaction Certificates, or similar certificates from other states, where applicable, to minimize such gross receipts, compensating, sales, and other similar Taxes. If the sale of goods or performance of services by Contractor takes place on tribal land, Contractor will comply with applicable state and tribal laws governing the reporting and payment of gross receipts Taxes on those transactions.

5.2.2. Contractor and Owner to Cooperate.

Contractor and Owner shall reasonably cooperate with each other to minimize the Tax liability of both Parties to the extent legally permissible, including separately stating taxable charges on Contractor's Invoices and supplying resale and exemption certificates, if applicable, and other information as reasonably requested, in each case if requested by the applicable taxing authority. In addition, to the extent any exemptions, abatements, production tax credits, advanced energy tax credits, or other credits against or deferrals of any Taxes may be available to Owner or Contractor under Applicable Law, the Parties shall reasonably cooperate in order to secure any such exemptions, abatements, credits against, or deferrals of, such Taxes.

6. TERMS OF PAYMENT.

Payments to Contractor shall be made as follows:

6.1. Payment Schedule.

Contractor shall be paid in accordance with the Payment Schedule as set forth in Exhibit I.

6.2. Progress Assessment.

Representatives of Contractor and Owner shall periodically, and in any event at least semi-monthly, review the Work completed for the Project and assess the progress of all Work completed on the Site and assess the completion of the related Payment Schedule milestones

6.3. Expedited Payment.

Owner agrees to make expedited payments for down payments and subsequent purchase payments for the PV Module and Battery equipment, as described in Exhibit X hereto. Owner agrees to make such expedited payments per the payment schedule of the equipment invoices consistent with Exhibit X, and Contractor is authorized to submit a separate Contractor Invoice for PV Module or Battery equipment. The Parties agree that any expedited payment made by Owner pursuant to this Section shall be treated as a partial payment of the Contract Price.

6.4. Progress Payments.

On or before the fifth (5th) Business Day of each month following the month in which Notice to Proceed is issued, Contractor shall submit to Owner completed Contractor's Invoices in accordance with Exhibit I (Payment Schedule) reflecting (a) the Work completed through the last Day of the prior month; (b) the portion of the Contract Price corresponding to such Work, as set forth in the Payment Schedule; and (c) updated cash flow. On or following the date that Contractor's completes a Milestone Item identified in the Payment Schedule, Contractor may submit additional Contractor's Invoices, but Contractor shall not otherwise submit more than one Contractor's Invoice per calendar month, except as otherwise permitted pursuant to Section 6.3.

Owner may, by delivering notice thereof to Contractor within five (5) Business Days of receipt of the

Contractor's Invoice, (a) reject any Contractor's Invoice that does not satisfy the requirements of this Section (including the requirement to deliver Lien waivers) or (b) dispute in good faith any charge, documentation or other information contained in such Contractor's Invoice. Owner shall include in such notice reasons for such rejection or dispute.

6.4.1. If Owner does not reject the Contractor's Invoice or Contractor delivers a replacement Contractor's Invoice which addresses the reasons for a previous rejection, then Owner shall, by the later of (i) twenty-one (21) Days after Owner's receipt of the original Contractor's Invoice, and (ii) ten (10) Days after Owner's receipt of the corrected Contractor's Invoice, pay to Contractor in current funds, the amount specified therein which is undisputed, by wire transfer to the account specified in writing by Contractor or by such other means mutually agreed by the Parties. With respect to any disputed amounts, Owner shall pay such amounts no later than twenty-one (21) Days following the resolution of such dispute.

6.4.2. Contractor agrees that it shall not include in any Contractor's Invoice sums attributable to Work which Owner or Contractor has rejected or any warranty work performed by Contractor.

6.5. **Payments Not Acceptance of Work.**

No payment made hereunder for Work, nor inspection or verification by Owner of Work for purposes of payment, shall be considered as approval or acceptance of any Work. All payments shall be subject to correction or adjustment in subsequent progress reviews and payments. Contractor's acceptance of any payment, and Owner's payment of any invoiced amount, shall not be deemed to constitute a waiver of amounts that are then in dispute.

6.6. **Contractor's Invoices.**

Each Contractor's Invoice shall be reasonably detailed and shall be accompanied by reasonable supporting documentation with respect to any such Work completed. Contractor shall not request in any Contractor's Invoice the payment of any sum attributable to Work for which Contractor has already been paid. Each Contractor's Invoice (1) shall identify: (i) which activities described on the Payment Schedule for the Work have been completed; (ii) the related milestone payments set forth on the Payment Schedule for the Work that are then due; and (iii) any other known amounts then payable by Owner to Contractor under any provision hereof (without limiting Owner's right to dispute any amounts requested for payment); and (2) shall include (if not previously delivered) a Waiver and Release Upon Progress Payment for payments previously made by Owner pursuant to this Agreement and a conditional form of such waiver for payments to be made pursuant to such Contractor's Invoice. Contractor understands and agrees that any Contractor's Invoice that is inaccurate shall not, to the extent of such deficiency, constitute a valid request for payment.

6.7. **Owner Review.**

Within seven (7) days after Owner receives a Contractor's Invoice and all accompanying documentation required by Section 6.4, Owner shall Notify Contractor of the date the Invoice is no longer in dispute, or of the basis for any Dispute. If Owner does not dispute an invoice within such seven (7) day period, then, subject to the terms and conditions set forth herein, Owner shall pay Contractor the full amount of the Contractor's Invoice within twenty-one (21) days of receipt of the invoice and all waivers of liens and claims and other documents to be delivered in connection with such invoice (each an "**Invoice Payment**"); and if Owner fails to do so, then Owner shall pay interest on such amounts due and owing at the rate and for the time period specified from time-to-time in the New Mexico Prompt Payment Act. Only disputed Contractor's Invoices or portions thereof that are corrected shall be treated as a new Contractor Invoice and the following above procedures shall apply.

6.8. **Payments.**

All payments to be made to either Party under this Agreement shall be paid in Dollars and shall be paid electronically (by means of ACH or wire) in immediately available funds by the date due or, if such date is not a Business Day, on the immediately succeeding Business Day. All payments shall be made to such account as may be designated by such Party from time to time by Notice to the other Party in accordance with Article 29; provided, however, that banking transfer instructions have been provided by such Party to the paying Party at least five (5) Business Days before the first payment of the paying Party is due and payable. Except for amounts subject to the New Mexico Prompt Payment Act, which are due as set forth in Section 6.4 and Section 6.7 of this Agreement, all other payments shall be due within thirty (30) days of the paying Party's receipt of the other Party's invoice and any supporting documentation and any delinquent payment, shall bear interest at the prime rate as published in "The Money Rates" Section of The Wall Street Journal (U.S. Edition) until paid, but not to exceed the maximum rate permitted by Applicable Law (the "**Contract Interest Rate**"). The payment of interest unaccompanied by payment of the delinquent amount shall not excuse or cure any Event of Default or delay in such payment. Provided that Owner has timely paid and Contractor has received amounts due and owing to Contractor under this Agreement, Contractor shall be responsible for paying all Subcontractors in connection with the Work completed by such Subcontractor.

6.9. **Final Payment.**

On or after the date on which Contractor delivers to Owner a Notice of Final Completion for the Project, Contractor shall submit a final Contractor's Invoice (a "**Final Contractor's Invoice**") which shall set forth all amounts due to Contractor that remain unpaid less the Punchlist Amounts of any outstanding Punchlist items. Owner shall pay to Contractor the amount due under such Final Contractor's Invoice for the Project ("**Final Payment**") in accordance with (a) Section 6.4, except that, if Owner does not dispute the Final Contractor's Invoice, Final Payment will be due ten (10) days after Owner certifies project completion and receives evidence of all waivers of liens and claims and other documents to be delivered in connection with the Final Contractor's Invoice; and (b) Section 6.7.

6.10. **Disputes Regarding Payments.**

Subject to Contractor's rights and remedies under Section 19.3(e), failure by Owner to pay any amount disputed in good faith until resolution of such Dispute in accordance with this Agreement shall not alleviate, diminish, modify or excuse the performance of Contractor or relieve Contractor's obligations to perform hereunder. Contractor's acceptance of any payment (including Final Payment), and Owner's payment of any amount under dispute, shall not be deemed to constitute a waiver of amounts that are then in dispute. Contractor and Owner shall use reasonable efforts to resolve all disputed amounts reasonably expeditiously and in any case in accordance with the provisions of Article 31. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. If a Contractor's Invoice was properly submitted in accordance with all of the provisions of this Agreement and amounts disputed by Owner in regards to such invoice are later resolved in favor of Contractor, Owner shall pay interest on such disputed amounts due to Contractor at the Contract Interest Rate, from the date on which the payment was originally due pursuant to such invoice until the date such payment was received by Contractor. If Owner elects to pay any portion of any disputed invoice and any portion of the amounts so paid by Owner is later resolved in favor of Owner, Contractor shall refund any such payment and pay interest on such payment at the Contract Interest Rate, from the date on which the payment was originally made by Owner until such refunded payment is received by Owner.

7. COMMENCEMENT AND SCHEDULING OF THE WORK

7.1. **Notice to Proceed.**

On the Notice to Proceed Date of the Project, Contractor shall commence performance of the Work for the Project and shall diligently prosecute such Work in accordance with the Work Schedule; provided that Delay Liquidated Damages shall be the sole and exclusive remedies of Owner for Contractor's delays in

achieving Substantial Completion by the Substantial Completion Guaranteed Date. If the Notice to Proceed Date for the Project is later than October 15, 2025, any such delay in the Notice to Proceed Date shall be an Owner-Caused Delay for purposes of this Agreement. If, however, Owner does not issue to Contractor the Notice to Proceed on or before January 15, 2026, then Contractor shall have the right to take action pursuant to Section 19.4.

7.2. Limited Notices to Proceed.

Prior to the issuance of the Notice to Proceed, Owner shall have the right to issue one or more Limited Notices to Proceed on terms (including payment terms) mutually agreeable to Owner and Contractor directing Contractor to commence and complete any portion of the Work specified in any such Limited Notice to Proceed. Contractor acknowledges that any payments from Owner pursuant to any Limited Notice to Proceed shall be treated as partial payments of the Contract Price, and that Owner shall be given a credit of such amount against any subsequent payments owed by Owner to Contractor pursuant to this Agreement. The Parties agree to work in good faith to agree on a Limited Notice to Proceed covering engineering and procurement work to be performed in calendar year 2024 within thirty (30) days after the Effective Date. If Owner has not issued a Limited Notice to Proceed for such work within thirty (30) days after the Effective Date, delay in issuance of a Limited Notice to Proceed shall be an Owner-Caused Delay for purposes of this Agreement. After LNTP is issued, Owner can cancel the project if NMPRC Approval is not granted or has not been received by September 1, 2025. Within 5 days of cancellation, Owner has the right to have all of the long lead items ordered assigned to Owner or its designee. If Owner cancels the project then all payments associated with LNTP are non-refundable but no more payments will be warranted ($0). If Owner or its designee accepts the assignment of the long lead items, those contract terms will be between Owner or its designee and the supplier. Contractor will not be a part of subsequent agreement.

7.3. Work Schedule.

Until Final Completion, Contractor shall update the Work Schedule in accordance with the requirements set forth in Exhibit A-1 to reflect the current status of the Work for the Project. The updates shall be performed and provided to Owner (in electronic form) on a monthly basis as part of the Monthly Progress Report for the Project. Contractor shall supply to Owner a weekly percentage completion report for major components of the Work on Tuesday of each week commencing on mobilization and continuing through Final Completion.

7.4. Progress Reporting.

From and after the Effective Date, Contractor shall prepare a Monthly Progress Report for the Project and submit it to Owner within five (5) Business Days after the end of each calendar month. In addition, Contractor shall keep, and furnish to Owner at Owner's request, such information as Owner may reasonably require to determine that the Work is progressing according to the Milestone Items in the Work Schedule and for the purpose of confirming that Invoice Payments are due hereunder. For the sake of clarity, Owner agrees that both MS Project and Oracle Primavera are acceptable project scheduling software.

8. FORCE MAJEURE; EXCUSABLE EVENT

8.1. Certain Events.

Excusable Events shall not include usual and foreseeable weather conditions, economic hardships, labor or Equipment shortages or consequences of any changes in general economic conditions, such as inflation, price escalation, interest rates, exchange rates or other factors of general application. Excusable Events also shall not include any delay to the extent resulting from causes within Contractor's or a Subcontractor's reasonable control or to the extent resulting from Contractor's or any Subcontractor's fault or neglect, or that could have been prevented by the exercise of reasonable due diligence by Contractor. Contractor's right to an extension of any Work Schedule and any milestones for an Excusable Event is

expressly conditioned on Contractor's compliance with each of the requirements in Section 8.2 (Notice of Force Majeure Event and Excusable Event).

8.2. **Notice of Force Majeure Event and Excusable Event.**

8.2.1. Notice of Force Majeure Event and Excusable Event (other than an Owner-Caused Delay).

If Contractor's ability to perform its obligations under this Agreement is affected by a Force Majeure Event or an Excusable Event (other than an Owner-Caused Delay, it being understood that the Notice requirements for an Owner-Caused Delay are set forth in Section 8.2.2), Contractor shall, promptly its knowledge of the impact of the event, and in any event no more than five (5) Business Days after Contractor's knowledge of the impact of such event, give Notice to Owner (a "**Delay Notice**") of the impact of such event, including what date Contractor became aware of the impact of such event and an estimate of the event's anticipated duration and effect upon the performance of its obligations hereunder, and any action being taken to avoid or minimize its effect. Contractor shall have a continuing obligation to deliver to Owner regular updated reports and any additional documentation and analysis supporting its claim regarding a Force Majeure Event or an Excusable Event (other than an Owner-Caused Delay) promptly after such information is available to Contractor. Contractor's failure to comply with the notice provisions of Section 8.2.1 shall constitute a waiver from relief under Section 8.4 for the period between the required date of Delay Notice and the date when Delay Notice is delivered.

8.2.2. Owner-Caused Delay Notice.

If Contractor wishes to claim an Owner-Caused Delay, Contractor shall Notify Owner of such Owner-Caused Delay within five (5) Business Days after Contractor becomes aware of such delay. Within ten (10) days after the initial Notice, Contractor shall provide Owner demonstrable evidence of the occurrence and duration of such Owner-Caused Delay and, if requested by Owner, such evidence shall be provided by an independent third party reasonably acceptable to Owner and Contractor at the sole cost and expense of Owner (if the independent third party verifies Contractor's assertions) or Contractor (in all other cases).

8.3. **Scope of Suspension; Duty to Mitigate.**

The suspension of, or impact on, performance due to a Force Majeure Event or an Excusable Event shall be of no greater scope and no longer duration than is required by such event. Contractor shall use Commercially Reasonable Efforts:

(a) to mitigate the duration of, and costs arising from, any suspension or delay in, or other impact to the performance of its obligations under this Agreement; and

(b) to continue to perform its obligations hereunder not affected by such event.

When Contractor is able to resume performance of its obligations under this Agreement, Contractor shall promptly give Owner Notice to that effect.

8.4. **Contractor's Remedies.**

8.4.1. Force Majeure Event.

As Contractor's remedy for the occurrence of a Force Majeure Event, and provided that Contractor has otherwise materially complied with the applicable obligations it may have under Sections 8.2.1 and 8.3, if a Force Majeure Event occurs: (a) the Work Schedule, Milestone Items, Substantial Completion Guaranteed Date and any related modifications to the Work shall be correspondingly adjusted by the period of time (if any) that Contractor is demonstrably delayed in the performance of the Work as a

result of the impact of such Force Majeure Event (including the effect such Force Majeure Event could be expected to have on the schedule for performing the Capacity Tests (PV and ESS) in order to provide the necessary stabilization period to mitigate any transient effects on the PV Modules resulting from being stored, idle or unutilized during such Force Majeure Event), and (b) if Contractor's costs increase despite Contractor's efforts to mitigate any such increases pursuant to Section 8.3(a), the Contract Price shall be increased by the actual and reasonably substantiated costs incurred by Contractor (including any reasonable costs incurred by Contractor in connection with the mitigation measures implemented by Contractor pursuant to Section 8.3(a)).

8.4.2. Excusable Event.

As Contractor's remedy for the occurrence of an Excusable Event and provided that Contractor has otherwise materially complied with the applicable provisions of Section 8.2, if an Excusable Event occurs:

(a) the Work Schedule, Milestone Items, Substantial Completion Guaranteed Date and any related modifications to the Work shall be correspondingly adjusted by the period of time (if any) that Contractor is demonstrably delayed in the performance of the Work (including the effect such Excusable Event could be expected to have on the schedule for performing the PV Capacity Test in order to provide the necessary stabilization period to mitigate any transient effects on the PV Modules resulting from being stored, idle or unutilized during such Excusable Event) as a result of the impact of such an Excusable Event, and

(b) if Contractor's costs increase despite Contractor's efforts to mitigate any such increases, pursuant to Section 8.3(a), the Contract Price shall be increased by the sum of the actual and reasonably substantiated costs incurred by Contractor (including any (i) reasonable costs incurred by Contractor in connection with the mitigation measures implemented by Contractor pursuant to Section 8.3(a); and (ii) any builder's all-risk deductible that Contractor will be liable for).

8.4.3. Changes In Work.

Upon the occurrence of a Force Majeure Event or an Excusable Event for which Contractor is entitled to a change in the Contract Price, the Work Schedule, the Milestone Items, the Substantial Completion Date or modifications to the Work, Contractor and Owner shall prepare a Change In Work Form in accordance with Article 16.

8.5. **Contractor's Right to Terminate.**

If the Work for the Project is suspended, prevented or delayed, in each case in the aggregate, for more than one hundred and eighty (180) days by reason of Force Majeure Events, or without prejudice to Section 19.3, Excusable Events, Contractor may terminate this Agreement by Notice to Owner. Upon any such termination, Contractor shall be entitled to receive the payments as set forth in Section 19.4(a), and Owner shall be entitled to payments due from Contractor, if any, in accordance with the terms of this Agreement.

8.6. **Owner's Right to Terminate.**

If the Work for the Project is suspended, prevented or delayed, in each case in the aggregate, for more than one hundred and eighty (180) days by reason of Force Majeure Events or Excusable Events (other than an Owner-Caused Delay), Owner may terminate this Agreement by Notice to Contractor. Upon any such termination, Contractor shall be entitled to receive the payments as set forth in Section 19.4(a), and Owner shall be entitled to payments due from Contractor, if any, in accordance with the terms of this Agreement.

9. SUPPLIERS AND SUBCONTRACTORS

9.1. **Project Suppliers and Subcontractors.**

Contractor may subcontract the performance of portions of the Work. Contractor may only subcontract the performance of portions of the Work to with the Major Subcontractors listed in Exhibit K for the types of services or equipment listed. Should Contractor propose to add a Major Subcontractor after the Effective Date, Contractor shall provide Notice to Owner of such proposed Major Subcontractor and the specific Work the proposed Major Subcontractor will provide. Within fifteen (15) days of such Notice, Owner shall Notify Contractor of its approval or rejection of such proposed Major Subcontractor. If Owner approves, or does not object to, such proposed Major Subcontractor within such fifteen (15) day period, the proposed Major Subcontractor shall be deemed approved and added to Exhibit K. Contractor shall update and amend Exhibit K by Notice to Owner from time to time as necessary to reflect additions or changes thereto. Upon Notice to Contractor, Owner may direct Contractor to remove a Major Subcontractor from Exhibit K if Owner determines that such Major Subcontractor is creating an adverse material impact on the Project. If applicable, Contractor shall employ apprentices as set forth in, and at levels required by, the New Mexico Public Utility Act.

9.2. **Assignment.**

No subcontract or purchase order shall bind or purport to bind Owner, but each subcontract and purchase order with a Subcontractor or Supplier shall provide for assignment of such subcontract or purchase order to Owner or, at Owner's request, to the Owner Financing Parties upon the termination of this Agreement due to a Contractor Event of Default.

10. LABOR RELATIONS

10.1. **General Management of Employees.**

Notwithstanding the provisions of Section 10.2, Contractor shall preserve its rights to exercise and shall exercise its management rights in performing the Work. Such management rights shall include the rights to hire, discharge, promote and transfer employees; to select and remove persons or supervision; to establish and enforce reasonable standards of production; to determine the number of craftsmen necessary to perform a task, job or project; and to establish, maintain and enforce rules and regulations conducive to efficient and productive operations.

10.2. **Labor Disputes.**

Contractor shall use reasonable efforts to adopt policies and practices designed to avoid Labor Disputes, and to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall advise Owner promptly, in writing, of any actual Labor Dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors or Suppliers, and in accordance with Section 3.7, Contractor shall notify Owner prior to taking any action with respect to any Labor Dispute involving any labor union affecting Contractor's performance of the Work at the Site or surrounding area. Notwithstanding the foregoing, the settlement of Labor Disputes shall be at the discretion of the Party having the difficulty.

10.3. **Personnel Documents.**

Contractor shall ensure that at the time of hiring, all its personnel and personnel of any Subcontractors performing the Work on the Site are in possession of all such documents required by Applicable Laws.

10.4. **Prevailing Wages**

(a) Contractor will pay, and cause its Subcontractors to pay, all Laborers and Mechanics who are performing PWA Work, wages at rates (including fringe benefits) not less than the wages assigned to each classification of Laborers and Mechanics by the U.S. Department of Labor, taking into account that the Prevailing Wages that must be paid are locked in as of the Effective Date of this Agreement (or when a

supplemental wage determination is issued for any workers for whom there is no established wage on the U.S. Department of Labor website) and that the Prevailing Wages must be updated when a contract is executed for additional, substantial construction, alteration or repair work not within the scope of the original Agreement. Contractor will pay Qualified Apprentices at no less than the wages prescribed for them by their apprenticeship programs.

(b) Contractor will apply for a supplemental wage determination for any missing labor classifications before construction or work on alterations or repairs starts (or promptly thereafter if the need for a supplemental wage determination was not apparent earlier) and include the information required by 26 C.F.R. Section l.45-7(b)(3), as updated by any future IRS Guidance. Contractor will cause the application to be submitted to the U.S. Department of Labor via email at IRAprevailingwage@dol.gov. Any wage approved in a supplemental wage determination issued in response to the submission will be a "Prevailing Wage" as used herein.

(c) If, after the Effective Date, Owner notifies Contractor in writing that (i) Owner reasonably believes that any of the wage rates for specific classifications of PWA Work are not the applicable Prevailing Wages required for Owner to comply with the Prevailing Wage Requirements and provides the Prevailing Wages that it believes apply or (ii) there has been an applicable Prevailing Wage determination by the U.S. Department of Labor, within thirty (30) days after receiving such written notice from Owner, Contractor will raise the wage rates for, and make catch-up payments to, any affected Laborers and Mechanics and retroactively apply such wages to any PWA Work already performed by such Laborers and Mechanics.

(d) Contractor will post in a prominent place where the Laborers and Mechanics doing PWA Work will see it, and keep posted during the entire period any PWA Work is done, a notice with the required Prevailing Wages for the different labor classifications involved in the PWA Work. The notice will include information about how to report any suspected failures to comply with the Prevailing Wage Requirements and Apprentice Requirements

10.5. **Apprentice Requirements**

(a) Pursuant to the New Mexico Apprenticeship Requirements found at NMSA 1978, Section 62-13-16 and the apprenticeship requirements of the Code, in the event that Contractor or any of its Subcontractors employs four (4) or more Laborers and Mechanics to perform any portion of the PWA Work, Contractor will, and will require that such Subcontractors to, (i) employ at least one (1) Qualified Apprentice to perform such PWA Work, (ii) comply with whatever apprentice-to-journey worker ratios are imposed by the apprentice programs supplying Qualified Apprentices, and in the absence of such ratios, by the U.S. Department of Labor or state apprenticeship agency, and (iii) cause no fewer than seventeen and one-half percent (17.5%) of the total labor hours of PWA Work performed by Contractor and its Subcontractors to be performed by Qualified Apprentices (the **"Contractor Apprentice Requirements"**).

(b) Contractor will notify Owner promptly if Contractor or any of its Subcontractors if there are no available qualified apprentices. In any such event, Contractor will provide Owner with all of the following:

(i.) A copy of the written request submitted to the registered apprenticeship program, including evidence of the date of receipt of such request by such program, such as an email acknowledgment by the apprentice program or a registered mail or courier service delivery receipt, and

(ii.) written evidence that the request was denied or a certificate from Contractor or any affected Subcontractors that the registered apprenticeship program failed to respond to the request for Qualified Apprentices within five (5) Business Days after receiving the request.

(iii.) This exception applies only for up to 365 days at a time and Contractor or the affected

Subcontractor must repeat the effort to find Qualified Apprentices by the end of each 365-day period.

10.6. **Compliance, Reporting and Cooperation**

(a) Contractor will ensure each Subcontractor helping with the PWA Work will comply with the same requirements that this Section 10.6 imposes on it.

(b) If New Mexico, the IRS, Treasury, or U.S. Department of Labor issues new or revised regulations or other guidance about the Prevailing Wage Requirements and Apprentice Requirements, the Parties will work in good faith to amend Sections 10.4, 10.5, 10.6 and 10.7 to conform to any new or revised regulations or interpretations or other guidance, but only to the extent that such new or revised regulations or other interpretations or other guidance requires changes to Contractor's obligations hereunder in order for Owner to comply with the Prevailing Wage Requirements or Apprentice Requirements.

(c) Contractor will, and will cause its Subcontractors performing PWA Work to, provide records to Owner containing all the information in 26 C.F.R. Section 1.45-12(b) and (c), as updated by any future IRS Guidance (the **"PWA Records")** and will retain the PWA Records for at least five (5) years and sixty (60) days after Final Completion of the Project. Under 26 C.F.R. the Section 1.45-12(b) and (c), the PWA Records include: (1) payroll records for each Laborer and Mechanic employed in the construction, alteration or repair of the Project; (2) identifying information, including the name, last 4 digits of Social Security or tax identification number, telephone number, and email address of each Laborer or Mechanic; (3) the location and description of the Project; (4) the labor classification that was applied to the Laborer or Mechanic; (5) the hourly rate of wages paid for each applicable labor classification; (6) records to support fringe benefit payments; (7) the total labor hours worked per pay period; (8) the total wages paid for each pay period; (9) records to support wages paid to any Qualified Apprentices, including records to support the registration of the apprentices with a registered apprenticeship program and applicable wage rates and apprentice-to-journeyman ratios prescribed by the program; and (10) the amount and timing of any correction payments. Contractor will provide such PWA Records to Owner at least on a quarterly basis. Such documentation shall be treated as Confidential Information that is only permitted to be shared pursuant to this Agreement.

(d) If at any time Owner reasonably believes that Contractor has not fulfilled the requirements of Section 10.4 or Section 10.5, Owner will notify Contractor promptly in writing.

(e) Promptly after Final Completion, and again promptly after each calendar year that includes any part of the ITC Recapture Period or PTC Period, as applicable, to the extent any work is performed after Final Completion, Contractor will provide Owner a certificate substantially in the form in Exhibit AA (the "**Prevailing Wage Certificate**").

10.7. **Prevailing Wage and Apprentice Indemnities**

(a) To the extent due to Contractor's or its Subcontractor's failure to comply with Sections 10.4, 10.5 or 10.6, Owner (or any transferee of the ITCs under Section 6418 of the Code) must make cure payments (including penalties) for failure to comply with the Prevailing Wage Requirements or Apprentice Requirements, then Contractor will reimburse Owner for all such cure payments (the "**PWA Indemnity**")**.**

(b) Owner will: (i) provide Contractor with advance notice in writing of the need to make cure payments with a sufficiently reasonable amount of time for Contractor to provide the PWA Records and any other evidence Owner requires to prove Contractor's and its Subcontractors' compliance with the Prevailing Wage Requirements and Apprentice Requirements, and (ii) provide Contractor an opportunity to review and comment on any correspondence and attend any substantive meetings and calls with any Governmental Authority about the alleged failure of Contractor or its Subcontractors to comply with the Prevailing Wage Requirements and Apprentice Requirements. Contractor will pay Owner the PWA Indemnity amount within

fifteen (15) Business Days after written notice from Owner and accompanying documentation of the PWA Indemnity amount. However, in the event Contractor disagrees about the need for Owner (or any transferee under Section 6418 of the Code) to make, or the amount of, cure payments to preserve the full ITCs on the Project, the disagreement will be submitted to a nationally-recognized independent tax counsel or accounting firm, selected jointly by Contractor and Owner, for an opinion. Any opinion that particular Services are not subject to the Wage Requirements or Apprentice Requirements must be at a "will" level.

(c) Owner expects any PWA Indemnity to have to be reported by the Owner as income, and Contractor will gross up the amount of the PWA Indemnity for federal, state and local income taxes by dividing the PWA Indemnity amount by one minus the Tax Rate, unless an independent tax counsel, selected jointly by the Parties, opines at least at a "should" level that the PWA Indemnity is not income to the Owner and is not a reduction in the tax basis that the Owner has in the Project.

(d) Contractor's obligations under this Section 10.7 will survive for at least five (5) years and sixty (60) days after Final Completion of the Project.

(e) Notwithstanding any other provision of this Agreement, Contractor is not obligated to reimburse or indemnify Owner for damages associated with compliance with the Apprentice Requirements or Prevailing Wage Requirements (including any asserted loss of tax credits) other than Contractor's PWA Indemnity obligation to make cure payments.

11. INSPECTION

11.1. Right to Reject Work.

At any time prior to Substantial Completion, regardless of whether payment has been made therefor, Owner shall have the right to reject by written notice to Contractor any portion of the Work for the Project that contains any Defect unless the same constitutes a Non-Critical Deficiency, in which case it shall be included on the Punchlist. Upon such rejection, Contractor shall remedy, at its sole cost and expense (subject to the provisions of Article 8), any such Defect that is identified by Owner in writing as giving rise to such rejection.

11.2. Inspection.

Owner and its Representatives shall have the right to observe and inspect the Project and the Work at the Site in a manner that does not interfere with Contractor's performance of the Work. If requested by Owner, Contractor shall arrange for Owner to inspect the facilities of Suppliers, and Contractor shall provide access for Owner to witness the Functional Tests of Equipment at the Site, such inspections to be arranged at reasonable times and with reasonable advance Notice, at Owner's cost. Owner shall have the right, but not the obligation, to inspect any item of Equipment, including Equipment under fabrication, material, design, construction, service, workmanship or any portion of the Work, provided that disassembly of any completed Work that does not contain Defects shall be at Owner's cost. Owner shall not be responsible for Contractor's or Subcontractor's costs to perform any tests elected to be performed by Contractor or Subcontractor or otherwise required by this Agreement. No inspection performed, witnessed, or failed to be performed or witnessed, by Owner, or any recommendation or lack of recommendation from Owner in connection therewith, shall be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of any Work.

12. SITE CONDITIONS

12.1. Unforeseeable Site Conditions.

It shall be an Excusable Event, and Contractor shall be entitled to request a reasonable Change In Work, to the extent that the actual Site Conditions (including the existence of any Hazardous Materials, any religious, historical or archeological resources, the existence of liens and encumbrances, the presence of

endangered or threatened species on the Site, including Unforeseen Protected Flora and Fauna, or any unknown physical conditions at, above or below the surface of the ground) vary materially from the Site Assumptions (such Site Conditions or variance being "**Unforeseeable Site Conditions**"). Contractor shall exercise due care in carrying out the Work to monitor and make itself aware of Site Conditions as the Work progresses, and shall promptly provide Notice to Owner of the discovery of the existence of any conditions at the Site that may create a safety hazard or pose a risk of harm to Owner or any of Owner's Separate Contractors' operations. Contractor shall, promptly upon the discovery of any such condition, cause the Work to be performed in a manner that accounts for such condition while still achieving the quality and safety standards set forth in this Agreement and implement all safety measures reasonably necessary to assure the safety of all persons at or near the Site and to prevent damage to property and bodily injury that might otherwise result as a consequence of continued performance of the Work in a manner that fails to account for such condition.

13. GUARANTEED CAPACITY AND TESTS

13.1. Guaranteed Solar Capacity and Other Requirements.

Subject to Section 15.2, Contractor shall perform the Work so that the PV Power Plant satisfies its Guaranteed Solar Capacity as set forth in Exhibit H-3.

13.2. Commissioning Plan.

Contractor shall provide for Owner's review and approval a Commissioning Plan within sixty (60) days prior to commissioning of the PV Power Plant in accordance with the requirements of Exhibit H-1. If Owner fails to Notify Contractor in writing of its approval or disapproval of any Commissioning Plan within fifteen (15) Business Days after Owner's receipt of such Commissioning Plan from Contractor, then Owner shall be deemed to have approved such Commissioning Plan.

13.3. PV Capacity Test Procedures.

Contractor shall develop PV Capacity Test Procedures in accordance with Exhibit H-2 and shall provide the PV Capacity Test Procedures to Owner for Owner's review and approval not less than fifteen (15) days prior to the date on which Contractor anticipates commencing the PV Capacity Test. If Owner fails to Notify Contractor in writing of its approval or disapproval of the PV Capacity Test Procedures within ten(10) Business Days after Owner's receipt of the PV Capacity Test Procedures from Contractor, then Owner shall be deemed to have approved the PV Capacity Test Procedures.

13.4. PV Test Schedules.

Contractor shall agree on the PV Capacity Test schedule with Owner and shall give advance Notice to Owner of the PV Capacity Test at least two (2) days prior to commencing any such test. If Owner fails to Notify Contractor in writing of its approval or disapproval of the PV Capacity Test schedule within twenty-four (24) hours after Owner's receipt of such schedule from Contractor, then Owner shall be deemed to have approved the schedule. Contractor shall keep Owner Representative reasonably apprised of the schedule for the PV Capacity Tests and changes in the schedule, the commencement and performance of any PV Capacity Test, and shall give Owner Representative at least one (1) Business Day advance Notice of the re-performance of any PV Capacity Test; provided, however, that any such period of advance Notice may be eliminated if Owner Representative is at the Site and is reasonably informed of re-performance of the PV Capacity Test. If Owner, or Owner's Engineer, as applicable, fails to be present after Contractor has provided notice of such PV Capacity Test in accordance with this paragraph, then Contractor shall have the right to proceed with such testing.

13.5. Testing

13.5.1. Functional Testing.

Contractor shall conduct the Functional Test in accordance with Exhibit H-2. Contractor must submit a test report for the Functional Test within five (5) Business Days after the completion of the Functional Test as set forth in Exhibit H-2 providing a summary of the Functional Test results.

13.5.2. PV Capacity Testing.

Contractor shall conduct the PV Capacity Test in accordance with the approved PV Capacity Test Procedures and Exhibit H-2. Representatives of Owner, including Owner's Engineer, shall have the right to be present during the PV Capacity Test performed by Contractor under this Article 13.

13.5.3. ESS Capacity Testing.

Contractor shall conduct the ESS Capacity Test in accordance with the approved ESS Capacity Test procedures in Exhibit V. Representatives of Owner, including Owner's Engineer, shall have the right to be present during the PV Capacity Test.

13.6. **Non-Conforming Work.**

At any time during and promptly after completion (whether or not successful) of the PV Power Plant and ESS Capacity Tests (or any re-performance of the Capacity Tests or pursuant to the Remedial Plan), Owner shall advise Contractor in writing of any Defect that was discovered by Owner during the Capacity Tests. Contractor shall, at Contractor's sole cost and expense (subject to Article 8), correct any Defect (except if such Defect is a Non-Critical Deficiency, in which case it shall be included on the Punchlist) and promptly provide Notice to Owner that such corrective measures have been completed. Any Dispute regarding the existence or correction of any such Defect shall be resolved pursuant to Article 31.

14. SUBSTANTIAL COMPLETION AND FINAL COMPLETION

14.1. **Punchlist**

14.1.1. Creation of Punchlist.

When Contractor believes that the Project is ready for testing and commissioning, Contractor and Owner shall jointly walk-down the PV Power Plant and ESS, and confer together as to the items which should be included on the finalized Punchlist. Contractor shall then prepare and deliver the list of Defects to Owner for its review and approval, ("**Proposed Punchlist**") for the PV Power Plant and ESS. Such Proposed Punchlist shall include a proposed completion, correction or repair schedule and Punchlist Amount for the completion, correction or repair of such Defects. If Owner does not deliver any changes to the Proposed Punchlist to Contractor within five (5) Business Days after the later to occur of (a) Contractor's submission to Owner of such Proposed Punchlist; and (b) the day that the joint walk-down occurred, then such Proposed Punchlist shall be deemed approved. The Proposed Punchlist that is ultimately approved or deemed to have been approved by Owner for the Project shall be referred to as the "**Punchlist**" for the Project. Neither Owner's approval of a Punchlist, nor Owner's failure to identify Defects to be added to the Punchlist, shall relieve Contractor of sole and complete responsibility for Defects in the Work or Equipment. If the Punchlist for the Project is not finalized by the Substantial Completion Date, the Proposed Punchlist as modified by Owner shall be deemed the Punchlist for the Project for all purposes hereunder until the Parties resolve such Dispute and otherwise finalize the Punchlist for the Project. Contractor shall note on such Punchlist the items under dispute.

14.1.2. Completion of Punchlist.

Contractor shall proceed promptly to complete and correct all items on the Punchlist for the Project. On a weekly basis after Substantial Completion, Contractor shall revise and update the Punchlist for the Project to include the date(s) that items listed on such Punchlist are completed by Contractor and accepted

by Owner. Notwithstanding any of the foregoing, the items listed on the Punchlist for the Project shall not be considered complete until Owner shall have inspected such Non-Critical Deficiencies and acknowledged, by notation on the updated Punchlist, that such item of Work is complete. If Owner does not so inspect and deliver such notations on the updated Punchlist to Contractor within seven (7) days after Contractor submits the updated Punchlist containing such Punchlist item to Owner, such Punchlist item for the Project shall be deemed completed on such seventh (7^{th}) day.

14.2. **Substantial Completion.**

The following are the conditions precedent for the PV Power Plant and Energy Storage System to achieve Substantial Completion:

(a) the PV Power Plant and Energy Storage System have achieved Mechanical Completion;

(b) the most recent PV Capacity Test and Functional Test for the PV Power Plant have been Successfully Run;

(c) the most recent ESS Capacity Test and test of ESS Unit Capabilities for the Energy Storage System have been Successfully Run;

(d) all performance tests and production requirements contained in Exhibit H-2 and H-3 have been successfully met;

(e) Contractor shall have paid all undisputed Delay Liquidated Damages for the PV Power Plant and ESS calculated and due pursuant to Section 15.1; provided that the amount of disputed Delay Liquidated Damages that is ultimately determined to be due and owing shall accrue interest from the Substantial Completion Date at the Contract Interest Rate;

(f) Owner has received all Contractor Deliverables (if any) for the Project as required to be delivered by the Substantial Completion Date pursuant to the Contractor Deliverables Table, including all Required Manuals identified therein, other than final as built drawings;

(g) the Punchlist for the Project shall be in final form or be deemed approved as provided for in Section 14.1.1 and only Non-Critical Deficiencies remain on the approved Punchlist; and

(h) Contractor shall have delivered all applicable Waivers and Releases Upon Progress Payment from Contractor required to be delivered pursuant to Section 6.3 for the PV Power Plant and a Conditional Wavier and Release Upon Progress Payment dated no later than the proposed Substantial Completion Date.

14.3. **Notice of Substantial Completion.**

When Contractor believes that it has satisfied the provisions of Section 14.2, Contractor shall deliver to Owner a Notice of Substantial Completion certifying that all Agreement requirements for Substantial Completion have been met and specifying the date Contractor believes Substantial Completion occurred. Within ten (10) Business Days after receipt of such Notice, Owner shall inspect all Work hereunder and either (a) accept that Substantial Completion has occurred and deliver to Contractor an Owner's Certificate of Substantial Completion for the Project dated to reflect the Substantial Completion Date, in which case the Substantial Completion Date shall be the date stated in the Notice of Substantial Completion (which date shall not be earlier than the date such certificate was delivered to Owner); or (b) Notify Contractor in writing that Substantial Completion has not been achieved, stating in detail the reasons therefore. Such procedure shall be repeated as necessary until Substantial Completion has been achieved. If Contractor receives a notice under clause (b) above, Contractor shall take the necessary steps to achieve Substantial Completion and the

procedures set forth under this Section shall be repeated (but with the period for Owner to respond to Contractor's notice reduced to two (2) Business Days) until such time as the applicable Certificate of Substantial Completion has been signed by Owner. Owner's failure to provide notice under clauses (a) or (b) above within the ten(10) or two (2) Business Day period (as applicable) after notice from Contractor shall be considered Owner-Caused Delay. The "**Substantial Completion Date**" shall be the date determined in accordance with this Section 14.3.

14.4. **Final Completion.**

Final Completion shall be deemed to have occurred only if all of the following have occurred:

(a) Substantial Completion has been achieved and all conditions precedent to Substantial Completion continue to be satisfied;

(b) All Capacity Tests for the Project have been Successfully Run on the most recent performance thereof;

(c) Contractor shall have completed all items on the Punchlist for the Project;

(d) All Contractor's and Subcontractors' personnel, equipment, surplus materials, waste materials, rubbish and construction facilities other than those to which Owner holds title shall have been removed from the Site, and any permanent facilities used by Contractor and the Site shall have been restored to the same condition that such permanent facilities and the Site were in on the Notice to Proceed Date of the Project, ordinary wear and tear excepted;

(e) Owner shall have received all Contractor Deliverables for the Project as set forth on the Contractor Deliverables Table to the extent not already delivered (including final as-built drawings and a supply and listing of spare parts and inventory appropriate for the operation and maintenance of the PV Power Plant and Energy Storage System in a manner consistent with Industry Standards);

(f) Contractor shall have assigned to Owner, or provided Owner, all warranties or guarantees that Contractor received from Subcontractors to the extent Contractor is obligated to do so under this Agreement;

(g) Contractor shall have delivered such other documents and certificates to Owner in compliance with this Agreement and all Applicable Laws;

(h) Contractor shall have delivered to Owner a Waiver and Release by Contractor Upon Final Payment and a Waiver and Release Upon Final Payment for all Subcontractors for the Project;

(i) Contractor shall have delivered to Owner a Notice of Final Completion that meets the requirements set forth in Section 14.5 of this Agreement;

(j) In cooperation with Owner Representative, Contractor shall have restored the Site, at Contractor's cost, as required to comply with requirements for filing an EPA Notice of Termination of Coverage under NPDES General Permit. This will include drill reseeding areas disturbed by Contractor, including laydown areas. Contractor shall not be responsible for restoring areas disturbed by Owner; and

(k) All other of Contractor's obligations under this Agreement shall have been performed or waived by agreement of the Parties.

14.5. **Notice of Final Completion.**

When Contractor believes that it has achieved Final Completion, Contractor shall deliver to Owner a Notice of Final Completion stating that Contractor believes it has satisfied the provisions of Section 14.4 for the Project. Within ten (10) Business Days after receipt of the Notice of Final Completion for the Project, Owner may inspect all Work hereunder and either (a) accept that Final Completion has occurred and deliver to Contractor an Owner's Certificate of Final Completion for the Project, in which case the Final Completion Date shall be the date stated in the Owner's Certificate of Final Completion (which date shall not be earlier than the date such Notice was delivered to Owner); or (b) notify Contractor in writing that Final Completion has not been achieved, stating in detail the reasons therefore. If Owner does not so respond to Contractor's Notice of Final Completion within such ten (10) Business Day period, then the Notice of Final Completion shall be deemed approved and the Final Completion Date shall be the date stated in the Notice of Final Completion. If Owner determines that Final Completion has not been achieved and delivers the Notice under the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work as will achieve Final Completion, and upon completion of such actions shall issue to Owner another Notice of Final Completion pursuant to this Section 14.5 and the provisions of this Section 14.5 shall apply with respect to the new Notice and each subsequent Notice thereafter in the same manner as they applied to the original Notice. The "**Final Completion Date**" of the Project shall be the date determined in accordance with this Section 14.5. Upon Final Completion, Contractor shall deliver the Warranty Bond to Owner and Owner shall simultaneously deliver the Performance Bond to Contractor (if such Performance Bond has not been previously called upon by Owner).

14.6. **Contractor's Access After Substantial Completion and Final Completion.**

Following Substantial Completion, Owner shall provide Contractor with reasonable and timely access to the PV Power Plant and ESS, subject to procedures necessary for the operation of the PV Power Plant and ESS, to: (a) complete all items on the Punchlist for the Project, and (b) satisfy the other requirements for Final Completion. The Parties expect that Contractor shall accomplish any necessary modification, repairs or additional work with minimal interference with commercial operation of the PV Power Plant or ESS and that reductions in and shut-downs of the PV Power Plant, ESS or any other portion of the Project's operations will be required only when necessary, taking into consideration the length of the proposed reduction or shut-down, and Owner's obligations and liabilities to customers or others. Provided that the correction of Non-Critical Deficiencies on a Punchlist does not require a shut-down of the PV Power Plant, ESS or any other portion of such Project, Owner agrees to permit Contractor unrestricted access to the PV Power Plant and ESS between sunset and sunrise to perform such Work. Notwithstanding the foregoing, should a reduction in or shut-down of the PV Power Plant or ESS's operations be required to complete any items on a Punchlist, then such reduction or shut-down shall be scheduled at the sole discretion of Owner, and Contractor shall complete such Work during such Owner scheduled reduction or shut-down. Contractor acknowledges that Owner may schedule such reduction or shut-down at any time including off peak hours, nights, weekends and holidays; provided that, in any event, Contractor shall be permitted to schedule such a reduction or shut-down between sunset and sunrise, provided, further, that the PV Power Plant and ESS are back on-line by sunrise of the next day.

14.7. **Consequences of Acceptance.**

In no event shall (a) Owner's payment for or acceptance of the Work or any Equipment be construed as or constitute having satisfied the conditions of Substantial Completion or Final Completion; nor (b) the execution of any accompanying Owner's Notice as set forth in this Article 14 be construed as or constitute a waiver of Owner's rights or Contractor's obligations under this Agreement.

14.8. **Final Capacity Test.**

After Final Completion and prior to the expiry of the Defect Warranty Period, at a time to be agreed by the Parties, Contractor shall conduct a PV Capacity Test in accordance with the approved PV Capacity Test Procedures and Exhibit H-2 to demonstrate the capacity of the PV Power Plant as of the date of such Capacity

Test. Contractor shall also conduct an ESS Capacity Test and final verification of ESS Unit Capabilities in accordance with the approved ESS Capacity Test Procedures and Exhibit V. Representatives of Owner, including Owner's Engineer, shall have the right to be present during the above tests performed by Contractor under this Section 14.8. The provisions of Article 13 shall apply *mutatis mutandis* to the conduct of such Capacity Tests. If Contractor demonstrates that such Capacity Tests have been Successfully Run, Owner shall return to Contractor all Contractor Credit Support that Owner then holds to the extent that such Contractor Credit Support has not as of such date been previously called upon by Owner.

15. LIQUIDATED DAMAGES

15.1. **Delay Liquidated Damages.**

Contractor understands that if Substantial Completion for the PV Power Plant or Energy Storage System do not occur by the Substantial Completion Guaranteed Date, as may be adjusted under this Agreement, Owner will suffer substantial damages, including the loss of operating revenue, incurring costs to purchase replacement power for its customers, additional interest and financing charges on funds obtained by Owner to finance the Work, reduction of return on Owner's equity investment in the Project, penalties and other operating and construction costs and charges. In that event, Contractor shall, subject to the Delay LD Cap and Aggregate LD Cap, be liable for and shall pay to Owner liquidated damages ("**Delay Liquidated Damages**"). For the avoidance of doubt, Delay Liquidated Damages equal the sum of the Solar Delay Liquidated Damages (Section 15.1.1) and the ESS Delay Liquidated Damages (Section 15.1.2). Any undisputed amount Contractor is obligated to pay to Owner under this Section 15.1 shall be due and payable within twenty-five (25) calendar days after Owner has invoiced Contractor for such amounts.

15.1.1. Solar Delay Liquidated Damages.

If the PV Power Plant fails to meet the requirements for Substantial Completion per Section 14.2 by the Substantial Completion Guaranteed Date, as may be adjusted under this Agreement, Solar Delay Liquidated Damages shall be Two Hundred Dollars ($200) per day per each MW of Delayed Solar Capacity that Contractor fails to achieve Substantial Completion after such Substantial Completion Guaranteed Date, as may be adjusted. "**Delayed Solar Capacity**" is an amount equal to the difference between the Guaranteed Solar Capacity and the Solar Capacity as of the determination date.

15.1.2. ESS Delay Liquidated Damages

If the Energy Storage System fails to meet the requirements for Substantial Completion per Section 14.2 by the Substantial Completion Guaranteed Date, as may be adjusted under this Agreement, ESS Delay Liquidated Damages shall be Two Hundred Dollars ($200) per day per each MW of Delayed ESS Capacity that Contractor fails to achieve Substantial Completion after such Substantial Completion Guaranteed Date, as may be adjusted. "**Delayed ESS Capacity**" is an amount equal to the difference between the Guaranteed ESS Capacity and the ESS Capacity as of the determination date.

15.2. **Solar Capacity Liquidated Damages Guarantee; Cure Period.**

If based on the results from the most recent PV Capacity Test that has been Successfully Run prior to Substantial Completion, the PV Power Plant has not satisfied its Guaranteed Solar Capacity: (a) Contractor shall exclude from the Substantial Completion invoice, as set forth in the Payment Schedule, an amount equal to three percent (3%) of the Contract Price ("**Solar Capacity Liquidated Damages Guarantee**") as liquidated damages for failure to satisfy its Guaranteed Solar Capacity; (b) within thirty (30) days after the Substantial Completion Guaranteed Date, Contractor shall submit the Remedial Plan to Owner, which shall specify the corrective actions Contractor will take and the commencement date of such corrective actions, for Owner's approval, which shall not be unreasonably withheld; and (c) Contractor shall continue to attempt to satisfy the Guaranteed Solar Capacity for the PV Power Plant in accordance with the Remedial Plan, until the date that is the one hundred sixtieth (160^{th}) day after such Substantial Completion Guaranteed Date (such period, the

"**Solar Cure Period**").

15.2.1. Achievement of Guaranteed Solar Capacity.

If Contractor achieves the Guaranteed Solar Capacity on or prior to the expiration of the applicable Cure Period, as may be adjusted under this Agreement, Contractor may invoice Owner the amount of the Solar Capacity Liquidated Damages Guarantee excluded from the Substantial Completion invoice for the PV Power Plant within five (5) Business Days after the date on which such Guaranteed Solar Capacity was achieved.

15.2.2. Failure to Achieve Guaranteed Solar Capacity.

If, however, Contractor fails to achieve the Guaranteed Solar Capacity prior to the expiration of the Cure Period, as may be adjusted under this Agreement, Contractor shall be deemed to have elected to have no further obligation to try to achieve such Guaranteed Solar Capacity for the PV Power Plant. Contractor shall calculate the Solar Capacity Liquidated Damages based on the results from the most recent PV Capacity Test that has been Successfully Run and Contractor shall deliver to Owner a Notice of such amount. Contractor shall pay to Owner liquidated damages in the amount of Three Hundred Fifty Thousand Dollars ($350,000) per MW of Delayed Solar Capacity ("**Solar Capacity Shortfall Damages**"), in which case the Guaranteed Solar Capacity will be reduced in an amount equal to the Delayed Solar Capacity for which Solar Capacity Shortfall Damages were timely paid pursuant to this Section 15.2. If such amount of Solar Capacity Liquidated Damages is less than the Solar Capacity Liquidated Damages Guarantee, Contractor shall invoice Owner the amount equal to such difference within five (5) Business Days after the date of such Notice. If the Solar Capacity Liquidated Damages calculated by Contractor are greater than the Solar Capacity Liquidated Damages Guarantee, Contractor shall pay to Owner an amount that is equal to the difference between the Solar Capacity Liquidated Damages Guarantee and the Solar Capacity Liquidated Damages calculated by Contractor pursuant to this Section 15.2.2, subject always to the Capacity LD Cap and the Aggregate LD Cap. Any undisputed amount Contractor is obligated to pay to Owner under this Section 15.2.2 shall be due and payable within twenty-five (25) calendar days after Owner has invoiced Contractor for such amounts.

15.3. **ESS Capacity Liquidated Damages Guarantee.**

If the Substantial Completion Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Contractor shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve ESS Commercial Operation. If Contractor has not caused all Delayed ESS Capacity to achieve ESS Commercial Operation on or before the Substantial Completion Guaranteed Date, as may be adjusted under this Agreement, then no later than twenty (20) Days after the Substantial Completion Guaranteed Date, Contractor shall pay to Owner liquidated damages in the amount of Three Hundred Fifty Thousand Dollars ($350,000) per MW of Delayed ESS Capacity (as of the Substantial Completion Guaranteed Date) ("**ESS Capacity Shortfall Damages**"), in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 15.3.

15.3.1. **Achievement of Guaranteed ESS Capacity.**

If Contractor achieves the Guaranteed ESS Capacity on or prior to the expiration of the applicable Cure Period, as may be adjusted under this Agreement, Contractor may invoice Owner the amount of the ESS Capacity Shortfall Damages Guarantee excluded from the Substantial Completion invoice for the Energy Storage System within five (5) Business Days after the date on which such Guaranteed ESS Capacity was achieved.

15.3.2. **Failure to Achieve Guaranteed ESS Capacity**.

If, however, Contractor fails to achieve the Guaranteed ESS Capacity prior to the expiration

of the Cure Period, as may be adjusted under this Agreement, Contractor shall be deemed to have elected to have no further obligation to try to achieve such Guaranteed ESS Capacity for the Energy Storage System. Contractor shall calculate the ESS Capacity Shortfall Damages based on the results from the ESS Test Period, as described in Section 15.3.3 hereto, and Contractor shall deliver to Owner a Notice of such amount. If such amount of ESS Capacity Shortfall Damages is less than the ESS Capacity Liquidated Damages Guarantee, Contractor shall invoice Owner the amount equal to such difference within five (5) Business Days after the date of such Notice. If the ESS Capacity Shortfall Damages calculated by Contractor are greater than the ESS Capacity Liquidated Damages Guarantee, Contractor shall pay to Owner an amount that is equal to the difference between the ESS Capacity Shortfall Damages Guarantee and the ESS Capacity Liquidated Damages calculated by Contractor pursuant to this Section, subject always to the Capacity LD Cap and the Aggregate LD Cap. Any undisputed amount Contractor is obligated to pay to Owner under this Section shall be due and payable within twenty-five (25) calendar days after Owner has invoiced Contractor for such amounts

15.3.3. **ESS Test Period.**

Contractor shall give written notice to Owner of its intent to start testing the Energy Storage System not less than thirty (30) Days prior to the date upon which Contractor expects to begin testing the Energy Storage System. During the Test Period (as defined in Exhibit V), Owner and Contractor shall mutually agree on the timing and delivery of Charging Energy delivered from the Solar Facility or from the grid as reasonably required for purposes of testing and commissioning the Project. Owner shall subsequently redeliver such Charging Energy to Transmission Provider at the Point of Delivery as Discharge Energy.

15.4. **ESS Non-Performance Liquidated Damages.**

ESS Unit Capabilities, including Guaranteed ESS Roundtrip Efficiency, shall be tested and calculated as described in Exhibit V prior to ESS Commercial Operation. Contractor will pay Owner the following liquidated damages ("**ESS Non-Performance Liquidated Damages**") as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, (b) an Owner-Caused Delay, or (c) failure of Transmission Provider to deliver Charging Energy).

15.4.1. ESS Response Delay Damages

Upon failure of Contractor to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, or Guaranteed System Latency during Project operation or ESS Unit Capabilities Testing, Contractor shall pay to Owner "ESS Response Delay Damages" equal to Fifty Thousand Dollars ($50,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit V herein. In the event that the ESS fails to meet the Guaranteed Frequency Response Capability, Contractor shall pay to Owner an amount equal to Fifty Thousand Dollars ($50,000) per event of failure

15.5. **Access During Cure Periods.**

Upon Substantial Completion, Owner shall assume care, custody and control of the PV Power Plant and Energy Storage System. Notwithstanding the foregoing, during the Cure Period and upon approval of the Remedial Plan, Owner shall provide Contractor with reasonable access to the Project. Contractor shall be granted such access, subject to Section 15.6, for purposes of achieving the Guaranteed Solar Capacity or Guaranteed ESS Capacity and for the period as set forth in the Remedial Plan, to:

(a) perform corrective actions pursuant to the Remedial Plan; and

(b) perform the PV Capacity Test or ESS Capacity Test, as provided in such Remedial Plan.

15.6. **Operations During Cure Periods.**

During the Cure Period, Owner shall have the right to operate the Project, including the right to maximize the economic benefits of the Project. Any failure by Owner to provide Contractor with access to the Project as set forth in this Section 15.6 shall not be considered a breach of any covenant, condition, representation or warranty of Owner, and shall not be construed as an Owner Event of Default. Contractor's only remedy for a failure by Owner to provide Contractor with access to the Project as set forth in this Section 15.6 shall be an equitable extension of the Cure Period until such reasonable access is provided.

15.7. **Sole Remedy; Liquidated Damages Not a Penalty.**

The amounts payable by Contractor or withheld by Owner under this Article 15, as limited by Article 30, and the other remedies provided for in this Article 15, shall be the sole and exclusive remedies of Owner for Contractor's delays in achieving Substantial Completion by the Substantial Completion Guaranteed Date, for failure to achieve its Guaranteed Solar Capacity during the PV Capacity Test, or for failure to achieve its Guaranteed ESS Capacity during the ESS Capacity Test, except to the extent arising from a Contractor Event of Default. The Parties agree that Owner's actual damages in the event of such delays or failures would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Solar Delay Liquidated Damages, the Solar Capacity Liquidated Damages, the ESS Delay Liquidated Damages, and the ESS Capacity Shortfall Damages are in the nature of liquidated damages and are a reasonable and appropriate measure of the damages that Owner would incur as a result of such delays or failures, and do not represent a penalty.

15.8. **Enforceability.**

The Parties explicitly agree and intend that the provisions of this Article 15 shall be fully enforceable by any court or arbitration proceeding exercising jurisdiction over any Dispute between the Parties arising under this Agreement. Contractor hereby irrevocably waives any defenses available to it under law or equity relating to the enforceability of the liquidated damages provisions in this Article 15 and other provisions relating thereto. If, notwithstanding the express agreement of the Parties that such provisions of this Article 15 are enforceable at law and equity as between themselves, Contractor attempts to avoid the application of the remedies relating to the liquidated damages in this Article 15 in any Dispute between the Parties and it is determined by any court or arbitrator that Contractor's liability for liquidated damages pursuant to this Article 15 is unenforceable, then the Parties agree that Owner shall have the right to avail itself of any right or remedy available to it in law or equity, including the right to pursue Contractor for actual damages resulting from a breach by Contractor of its contractual obligations, subject to the limitations on liability set forth in Article 30.

16. CHANGES IN THE WORK

16.1. **Change In Work.**

A "**Change In Work**" shall result from one of the following:

(a) changes in the Work required by Owner and permitted by Section 16.2;

(b) the occurrence of a Force Majeure Event or an Excusable Event (as and only to the extent permitted by Sections 8.4.1 or 8.4.2, respectively);

(c) an Owner Directive, in accordance with Section 16.7;

(d) an Owner requested delay in the Work pursuant to Section 20.3.1;

(e) any reduction or increase in the Minimum Gross Capacity of the Project requested by Owner, subject to Section 16.2; or

(f) any other event or circumstance specifically identified in this Agreement as constituting a Change In Work or entitling either Party to seek a Change In Work or Change In Work Form.

16.2. **By Owner.**

Subject to Section 16.4, Owner shall have the right to make modifications, deletions, accelerations, alterations, suspensions, or additions to the Work; provided, however that, in no event may Owner, without Contractor's prior written consent, make a change in the Work that would (a) reduce or increase the Minimum Gross Capacity of the PV Power Plant or (b) require that any portion of the Project be located at any site other than the Site unless such change is required by Applicable Law. All such changes shall be made in accordance with this Article 16, shall be documented in accordance with Section 16.4 and shall be considered, for all purposes of this Agreement, as part of the Work.

16.3. **Adjustment to Work Schedule Due to Force Majeure Events or Excusable Events.**

If a Force Majeure Event or an Excusable Event occurs, the Work Schedule, the Milestone Items, the Substantial Completion Guaranteed Date and the Contract Price shall be modified as and to the extent provided in Section 8.4.1 or 8.4.2, as the case may be, and as set forth in the Change In Work Form accepted by Owner.

16.4. **Preparation of Change In Work Form**

16.4.1. Due to Owner Initiated and Other Changes In Work.

Upon the occurrence of any of the events set forth in Section 16.1(a), (d), (e), or (f), Owner or Contractor, as applicable, shall provide the other Party with a Notice of the occurrence of such event, and Contractor shall, as soon as practicable, prepare and submit to Owner a preliminary written estimate relating to the proposed Change In Work, including (a) any projected change in the cost of the performance of the Work and any projected modification of the Contract Price, occasioned by such Change In Work; (b) the effect such Change In Work could be expected to have on the Work Schedule (including the effect such Change In Work could be expected to have on the schedule for performing the PV Capacity Test or ESS Capacity Test in order to provide the necessary stabilization period to mitigate any transient effects on the PV Modules resulting from being stored, idle or unutilized); and (c) the potential effect of such Change In Work on Contractor's ability to comply with any of its obligations hereunder, including Contractor's warranties and the Guaranteed Solar Capacity and Guaranteed ESS Capacity. Contractor's cost of any Change shall include and identify all elements of cost and a total lump sum cost using the following guidelines: (i) in the case of any Change (other than a Change resulting from the events set forth in Section 16.1(e), the actual and reasonably substantiated costs incurred by Contractor, and (ii) in the case of any Change resulting from the events set forth in Section 16.1(e) (to a maximum percentage change of ten percent (10%), an amount equal to the pro rata portion of the Contract Price corresponding to each MW of reduction or increase in the Minimum Gross Capacity. The adjustment in the Contract Price specified in this Section 16.4.1 and the Work Schedule shall be the sole adjustment related to such specific Change In Work (to the exclusion of other theories of recovery such as cumulative impact). If the Parties cannot agree to a lump sum adjustment for such Change In Work, then Owner may direct Contractor to perform such Work in accordance with Section 16.7 on a time and materials basis.

16.4.2. Due to Excusable Event or an Event of Force Majeure.

If a Force Majeure Event or an Excusable Event occurs for which Contractor is entitled to an adjustment to either the Work Schedule or the Contract Price pursuant to Section 8.4.1 or Section 8.4.2, as applicable, then Contractor shall, as soon as practicable, prepare and submit to Owner in accordance with Section 8.4.3 a proposed Change In Work Form, which shall include (a) any projected change in the Contract Price, occasioned by such Change In Work; and (b) the effect such Change In Work could be expected to have on the Work Schedule (including adjustments necessary regarding the schedule for performing the PV Capacity Test and ESS Capacity Test in order to provide the necessary stabilization period to mitigate a

transient effects on the PV Modules resulting from being stored, idle or unutilized), or any other schedule or dates for performance by Contractor hereunder, in each case all as and to the extent provided in Section 8.4.1 (with respect to a Force Majeure Event) and Section 8.4.2 (with respect to an Excusable Event) and as set forth in the Change In Work Form accepted by Owner. The adjustment in the Contract Price specified in this Section 16.4.2 and the Work Schedule shall be the sole adjustment related to the applicable Force Majeure Event or Excusable Event addressed in such specific Change In Work as and to the extent expressly described in the Change In Work. If the Parties cannot reach agreement on the matters listed in the Change In Work Form submitted pursuant to this Section 16.4.2, then such matter shall be referred to dispute resolution under Article 31.

16.5. **Execution of Change In Work Form.**

If Contractor and Owner reach agreement on the matters that constitute the Change In Work, then the Parties shall execute a Change In Work Form. If the Parties cannot reach agreement on the matters listed in the Change In Work Form submitted pursuant to this Section 16.5, then such matter shall be referred to dispute resolution under Article 31, unless Owner directs Contractor to perform the Change In Work pursuant to an Owner Directive pursuant to Section 16.7.

16.6. **No Obligation or Payment Without Executed Change In Work Form.**

Contractor shall not be obligated to undertake a Change In Work until Contractor has received (a) a Change In Work Form submitted by Contractor and accepted by Owner, except as set forth in Section 16.7, or if immediate action is reasonably required to address an emergency which endangers human health or property; or (b) received a written Owner Directive; or (c) received Notice from Owner indicating that Owner does not believe that Contractor is entitled to a Change in Work with respect to the matters that are the subject of Contractor's Notice of a change or claim, and directing that Contractor proceed with the disputed Work. In the absence of such executed Change In Work Form, except as set forth in Section 16.7 or in the event of such emergency, if Contractor undertakes any changes in the Work, or performs extra work or otherwise incurs added costs, then Contractor shall make any such changes at Contractor's risk and expense and shall not be entitled to any schedule modification or payment hereunder for undertaking such changes (subject to Contractor's right to a Change In Work in the circumstances specified in Sections 8.4.1, 8.4.2 and 8.4.3). Nothing in this Section 16.6 shall be deemed to waive Contractor's or Owner's right to avail itself of the dispute resolution procedures pursuant to Article 31 with respect to disputed Change In Work Forms.

16.7. **Owner Directives.**

If Contractor and Owner are unable to agree on whether a Change In Work has occurred or on the matters described in a Change In Work Form, regardless of whether such Change In Work Form was initiated by Contractor or by Owner, Contractor shall perform the Work as Owner so directs in writing (provided that such work is subject to the limitations set forth in Section 16.2 (an "**Owner Directive**")) on a monthly time-and-materials basis, plus a fee of ten percent (10%) for overhead and general and administrative costs and profit, in accordance with the following procedures:

(a) Contractor shall, as soon as practicable, prepare and submit to Owner a preliminary written estimate relating to the Owner Directive;

(b) the Parties shall then promptly mutually agree on the schedule and other changes in terms and conditions associated with work under the Owner Directive, including the estimate described in clause (a) of this Section 16.7;

(c) Owner shall assign a "Pending Item Claim Number" to the Work in question and shall issue Contractor a separate Notice to proceed;

(d) Contractor shall proceed to perform the Work identified therein;

(e) Using the "Pending Item Claim Number" to identify the Work identified in the Owner Directive, Contractor shall submit on a monthly basis a Contractor's Invoice to Owner for payment of an amount equal to the sum of the time and materials costs, which may include reasonable allowances for overhead and profit; and

(f) Upon Owner's request, Contractor shall prepare and provide reasonable calculations of any such charges and Subcontractor invoices, time sheets and such other reasonable documents to support such Contractor's Invoice.

Contractor expressly waives any other compensation or relief as a result of such Owner Directive.

16.8. **Disputed Changes In Work.**

Any Disputes regarding a Change In Work Form or whether a Change In Work has occurred or that are otherwise related to a Change In Work shall be subject to the dispute resolution provisions of Article 31.

16.9. **No Suspension.**

Contractor shall not suspend or stop the Work pending resolution of any alleged or proposed Change In Work unless directed by Owner in writing to suspend the Work.

17. WARRANTIES CONCERNING THE WORK

17.1. **Defect and Design Warranties.**

With respect to the Project, Contractor warrants and guarantees to Owner:

17.1.1. Defect Warranty.

That all Work, including the supply of Equipment (other than the PV Modules included in the Equipment, which such warranty is set forth in Section 17.1.3) furnished by Contractor (and any of its Subcontractors or Suppliers) for the Project shall:

(a) be free from Defects in material, manufacture and workmanship;

(b) be new and unused (when installed) unless the Parties agree otherwise in advance and in writing;

(c) be of good quality and good condition (when installed);

(d) conform to the applicable requirements of the Statement of Work;

(e) be in compliance with Applicable Law and Industry Standards; and

(f) with respect to Equipment, be free from any charge, lien, security interest or other encumbrance to the extent Contractor has received payment therefore.

(the "**Defect Warranty**").

17.1.2. Design Warranty.

That the design of the Project (for avoidance of doubt, other than the PV Modules included in the Equipment, which such warranty is set forth in Section 17.1.3) shall conform to Section 1.6 of the Statement of Work, Industry Standards and Applicable Law (the "**Design Warranty**").

17.1.3. PV Module Warranty.

Contractor shall procure from the relevant Suppliers warranties for the PV Modules for the PV Power Plant in accordance with the Module Warranty Terms and Conditions. Contractor shall install such PV Modules in accordance with the PV Module Manufacturer's Installation Manual attached hereto as Exhibit T, Owner specifications set forth in this Agreement and Applicable Law (collectively, "**Installation Requirements**"). The Parties agree that Contractor shall be permitted to supply and install PV Modules that contain minor visual spots or blemishes; provided that none of the Warranties provided herein, the PV Capacity Tests to be performed hereunder or the Module Warranty Terms and Conditions shall in any way be conditioned as a result of such visual spots or blemishes.

17.2. **Warranty Periods**

17.2.1. Defect Warranty Period.

Contractor shall provide the Defect Warranty for a period ending twelve (12) months after the Final Completion Date (the "**Defect Warranty Period**"); provided, however, that the warranty period for any Equipment for the Project required to be re-performed, repaired, corrected or replaced following discovery of a Defect or other non-compliance with the Defect Warranty during the Defect Warranty Period shall continue until the end of the later of (a) the expiration of the Defect Warranty Period and (b) one (1) year from the date of completion of such repair or replacement. Notwithstanding any other provision of this Section 17.2, the Defect Warranty Period (as the same may be extended pursuant to clause (b) of this Section 17.2.1) shall end no later than twenty-four (24) months after the Final Completion Date.

17.2.2. Design Warranty Period.

Contractor shall provide the Design Warranty applicable to the Project for a period of twelve (12) months commencing on the Final Completion Date (the "**Design Warranty Period**").

17.3. **Exclusions**

17.3.1. Defect Warranty and Design Warranty.

The Defect Warranty and Design Warranty shall not apply to:

(a) damage to or failure of any Work or Equipment to the extent such damage or failure is directly caused by:

(i) a failure by Owner or its representatives, agents or contractors to maintain or operate such Equipment in accordance with Industry Standards or in accordance with the recommendations set forth in the Required Manuals but only if such failure occurs after the Substantial Completion Date;

(ii) operation of such Equipment by Owner or its representatives, agents or contractors in excess of operating specifications for such Equipment as set forth in the Required Manuals but only if such failure occurs after the Substantial Completion Date;

(iii) a Force Majeure Event or an Excusable Event; and

(b) items that require replacement due to normal wear and tear, normal erosion or corrosion or casualty loss.

17.3.2. Operating Personnel.

Notwithstanding the foregoing, prior to the training of the Operating Personnel provided by Contractor pursuant to Section 3.17, any adverse stress or damage to the Equipment caused by Operating Personnel while under the direction of Contractor shall be the responsibility of Contractor, except to the extent such Operating Personnel's acts or omissions constitute negligence or willful misconduct. .

17.4. **Enforcement by Owner; Subcontractor Warranties; Supplier Warranties.**

All Subcontractors', manufacturers', and Suppliers' warranties and guarantees respecting any part of the Work, any Equipment, and any materials used therein shall be deemed obtained by Contractor for the benefit of Owner without the necessity of separate transfer or assignment thereof.

17.4.1. Owner's Right to Enforce Warranties.

Commencing on the expiration of the Defect Warranty Period, Owner shall be entitled to enforce all applicable, unexpired original warranties from Subcontractors, and Contractor shall use Commercially Reasonable Efforts, at Owner's cost, to assist Owner in enforcing such warranties, when and as reasonably requested by Owner in writing. In addition, prior to the expiration of such Defect Warranty Period, Owner, at its option and upon prior Notice to Contractor, may enforce the Defect Warranty against any Subcontractor if a Contractor Event of Default exists and this Agreement has been terminated in accordance with Article 19.

17.4.2. Assignment of Warranties by Contractor.

If a Contractor Event of Default exists and this Agreement has been terminated in accordance with Article 19, or otherwise at the end of the Defect Warranty Period, Contractor shall assign all applicable, unexpired and assignable original warranties of all Suppliers to Owner, subject to the terms and conditions of any such remaining warranties of all Suppliers; provided, however, that, notwithstanding such assignment, Contractor shall be entitled to enforce each such warranty through the end of such Defect Warranty Period. Contractor shall use Commercially Reasonable Efforts to cause Owner to be an express third-party beneficiary of all such warranties of the Supplier (but at no additional cost to Contractor or Owner for such warranties). At Owner's request, Contractor shall deliver to Owner, at the end of such Defect Warranty Period, copies of all subcontracts containing such assignable warranties (with reasonable redactions to keep commercial and economic terms confidential).

17.5. **Correction of Defects**

17.5.1. Notice of Warranty Claim.

Promptly upon Owner's Notice to Contractor of the discovery of any failure of the Work to meet the Defect Warranties or Design Warranties, which failure shall have arisen prior to the expiration of the Defect Warranty Period or Design Warranty Period, as applicable, Contractor shall promptly (at Contractor's option and expense), correct, repair or replace the Defect. Any remediation or repair performed by Contractor shall be performed to the standards set forth in this Agreement. Additionally, Contractor shall pay the cost of removing any Defect and the cost of re-performing, repairing, replacing or testing such part of the Work as shall be necessary to cause the Work to conform to the Warranty. The timing of and the work to be completed with respect to any such remediation or repair shall be subject to Owner's approval, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing and subject to Section 17.5.3, if any of the Work shall fail to satisfy the Warranty during the Warranty Period, and such failure endangers human health or property or materially and adversely affects the operation of the Project, Contractor shall correct the failure as soon as is practicable. Notwithstanding anything to the contrary herein, Contractor shall have a right to dispute any Defect Warranty claim.

17.5.2. Failure of Contractor to Perform Warranty Work.

Contractor shall be given a reasonable opportunity to perform any Work under its Defect Warranty or Design Warranty under this Article 17. If Contractor does not use its reasonable efforts to promptly proceed to complete the warranty work for the Project, or cause any relevant Subcontractor to proceed to complete such warranty work, required to satisfy any warranty claim properly asserted under the terms of this Article 17, Owner shall, after giving Contractor at least three (3) Business Days' prior Notice of Owner's intent to perform the remedy itself, have the right to perform the necessary warranty work to remedy the warranty claim, or have third parties perform the necessary warranty work and Contractor shall bear the reasonable costs thereof.

17.5.3. Chronic Failure.

If a chronic failure of any component occurs during the Defect Warranty Period, Contractor will investigate the root cause of the failure and repair, replace or adjust to correct the root cause of the chronic failure in accordance with Industry Standards. For the purpose of this Section 17.5.3, chronic failure shall mean a substantially similar failure to: (a) ten percent (10%) where the number of such components is thirty (30) or more; or (b) thirty-five percent (35%) where the total number of such components is less than thirty (30) but more than two (2). [.

17.6. **Limitations On Warranties.**

EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN ARTICLE 4, THIS ARTICLE 17 AND SECTION 18.2.1, CONTRACTOR DOES NOT MAKE ANY OTHER EXPRESS WARRANTIES OR REPRESENTATIONS, OR ANY IMPLIED WARRANTIES OR REPRESENTATIONS, OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE. THE REMEDIES PROVIDED FOR IN THIS ARTICLE 17 WITH RESPECT TO ANY WORK WHICH FAILS TO SATISFY THE DEFECT OR DESIGN WARRANTY DURING THE APPLICABLE WARRANTY PERIOD SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF OWNER AS A RESULT OF SUCH FAILURE.

18. EQUIPMENT IMPORTATION; TITLE

18.1. **Importation of Equipment.**

Contractor or its Subcontractors, at Contractor's own cost and expense, shall make all arrangements, including the processing of all documentation, necessary to import into the United States the Equipment and any other equipment and other items necessary to perform the Work and shall coordinate with the applicable Governmental Authorities in achieving clearance of United States customs for all such Equipment and other items and, to the extent available under Applicable Laws of the United States but without limiting Contractor's liability, for any and all Taxes as specified in Section 5.2.

18.2. **Title**

18.2.1. Condition.

Subject to Section 18.2.2, Contractor warrants good and marketable title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever (to the extent Owner's payments to Contractor are made and received by Contractor in accordance with this Agreement and other than those created by Owner or any Owner's Separate Contractor), to all Work, Equipment and other items furnished by Contractor or any of its Subcontractors and that (x) become part of the Project or (y) are to be used for the operation, maintenance or repair thereof.

18.2.2. Transfer.

Title to all Equipment and all Work provided hereunder for the Project shall pass in

accordance with Section 18.2.1 to Owner upon the earlier of payment for such Equipment or incorporation of such Equipment or Work into the Project (other than to the extent set forth in Section 19.4(a)); provided, however, that the vesting of title to Owner shall not impose any obligations on Owner or relieve Contractor of any of its obligations hereunder.

18.2.3. Custody During Performance.

The transfer of title shall in no way affect Owner's rights as set forth in any other provision of this Agreement. Contractor shall have care, custody, and control of all Equipment for the Project and exercise due care with respect thereto until the earlier of the Substantial Completion Date or the termination of this Agreement.

18.3 Transfer of Care, Custody and Control.

On and after the Substantial Completion Date or the termination of this Agreement, Owner shall take complete possession and control and shall assume and bear the risk of loss and responsibility for the Project.

19. DEFAULTS AND REMEDIES

19.1. **Contractor Events of Default.**

Contractor shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, a "**Contractor Event of Default**"):

(a) Contractor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors, or Contractor commences any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

(b) insolvency, receivership, reorganization, or bankruptcy or similar proceedings are commenced against Contractor and such proceeding shall remain undismissed or unstayed for a period of thirty (30) days;

(c) any material representation or warranty made by Contractor herein was false or misleading when made;

(d) Contractor purports to assign or transfer this Agreement or any right or interest herein except in accordance with Article 26;

(e) Contractor fails to maintain any insurance coverages required of it in accordance with Article 21;

(f) Contractor fails to discharge or remove any lien or claim filed against Owner, the Project or the underlying property, or against any improvements thereof, as and when required by this Agreement;

(g) Contractor fails to make prompt payments due and owing to any Subcontractor, as required by this Agreement or Applicable Law;

(h) Contractor submits a fraudulent claim in an effort to unfairly obtain additional compensation from Owner;

(i) Contractor fails to perform any provision of this Agreement providing for the payment of money to Owner, except for any disputed amounts;

(j) the Substantial Completion Date has not occurred by the one hundred sixtieth (160th) day after the Substantial Completion Guaranteed Date of the Project, as such date may be extended pursuant to the provisions of this Agreement ;

(k) except as a result of an Owner Event of Default or a Force Majeure Event, (i) Contractor Abandons the Work and Contractor fails to remedy such breach within ten (10) Business Days after the date on which Contractor first receives a Notice from Owner with respect thereto, or (ii) Contractor fails to commence performance of the Work for the Project within ten (10) Business Days after the Notice to Proceed Date of the Project;

(l) if Contractor Credit Support is invalid for any reason, is no longer in effect or is unenforceable at any time at which Contractor Credit Support is required to be in force; or

(m) Contractor fails to perform any material provision of this Agreement not otherwise addressed in this Section 19.1.

19.2. **Owner's Rights and Remedies.**

If a Contractor Event of Default occurs, subject to Article 30, Owner shall give Contractor Notice and a fourteen (14) days cure period unless a longer or shorter cure period is set forth for a particular Contractor Event of Default in Section 19.1 (each a "**Contractor Cure Period**"). If such breach cannot be remedied within the applicable Contractor Cure Period, such period shall be extended if: (i) curing such failure reasonably requires more than the Contractor Cure Period; and (ii) Contractor commences such cure within such Contractor Cure Period and diligently prosecutes such cure to the satisfaction of Owner. Where an extension is warranted, Owner and Contractor shall use their Commercially Reasonable Efforts to agree upon an appropriate Contractor Cure Period in good faith, provided that the failure to so agree shall not affect the rights and obligations of the Parties hereunder. If Contractor fails to cure the Contractor Event of Default within the applicable Contractor Cure Period or agreed-upon extension, Owner or its assignees shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Owner hereunder, and Contractor shall have the following obligations:

(a) (i) Owner may terminate this Agreement by giving Notice of such termination to Contractor;

(ii) if Owner terminates this Agreement in accordance with the provisions hereof, Contractor shall withdraw from the Site, shall assign (to the extent such subcontract may be assigned) to Owner (without recourse to Contractor) such of Contractor's subcontracts as Owner may request in writing, and shall license, in the manner provided herein, to Owner all Intellectual Property Rights of Contractor related to the Work reasonably necessary to permit Owner to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its respective agents to use such information in completing the Work, shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Owner may direct, and Owner may take possession of any or all Contractor Deliverables necessary for completion of the Work (whether or not such Contractor Deliverables are complete); and

(iii) if Owner terminates this Agreement, Owner may seek damages as provided in Section 20.1;

(b) Owner may proceed against the Contractor Credit Support in accordance with its terms;

(c) Subject to the dispute resolution procedures set forth in Article 31, Owner may seek equitable relief solely to cause Contractor to take action, or to refrain from taking action, pursuant to this Agreement, or make restitution of amounts improperly received under this Agreement;

(d) Owner may pursue the dispute resolution procedures set forth in Article 31 to enforce the provisions of this Agreement;

(e) Owner may make such payments as are reasonably required to cure any monetary-related Contractor Event of Default and either offset the cost of such payment against payments otherwise due to Contractor under this Agreement or Contractor shall be otherwise liable to pay and reimburse such amounts plus interest at the Contract Interest Rate to Owner promptly;

(f) Owner may suspend the Work by giving Notice of such suspension to Contractor; or

(g) Without exercising Owner's termination for default rights, Owner may perform the obligation in respect of which Contractor is in default, all at Contractor's expense, using Owner's own forces or by engaging other contractors.

19.3. **Owner Event of Default.**

Owner shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, an "**Owner Event of Default**"):

(a) Owner becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors, or Owner commences any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

(b) insolvency, receivership, reorganization, or bankruptcy or similar proceedings are commenced against Owner and such proceeding shall remain undismissed or unstayed for a period of thirty (30) days;

(c) any material representation or warranty made by Owner herein was false or misleading when made;

(d) Owner purports to assign or transfer this Agreement or any right or interest herein, except in accordance with Article 26;

(e) Owner fails to perform any provision of this Agreement requiring Owner to pay money to Contractor and such failure continues for ten (10) days after Owner has received a Notice from Contractor with respect thereto;

(f) An Owner directed suspension of the Work in excess of 180 days;

(g) Owner fails to perform any material provision of this Agreement not otherwise addressed in this Section 19.3.

19.4. **Contractor's Rights and Remedies.**

If an Owner Event of Default occurs, subject to Article 30, Contractor shall give Owner Notice of such Owner Event of Default and a fourteen (14) day period in which to cure the Owner Event of Default unless a shorter or longer cure period is set forth for a particular Owner Event of Default in Section 19.3 (and which notice, for the avoidance of doubt, is in lieu of, and not in addition to, the cure period set forth in Section 19.3, if any). If the Owner Event of Default is not cured within such cure period, and subject to Article 30, Contractor shall have the following rights and remedies:

(a) to seek equitable relief solely to cause Owner to take action, or refrain from taking action, pursuant to this Agreement, or make restitution of amounts improperly received under this Agreement;

(b) to pursue the dispute resolution procedures set forth in Article 31 to enforce the provisions of this Agreement; or

(c) suspend the Work by giving Notice of such suspension to Owner; or

(d) if the Owner Event of Default is not cured within thirty (30) days of Notice of Owner Event of Default, Contractor may give notice of its intent to terminate this Agreement by giving Notice thereof to Owner, and Contractor may terminate this Agreement, in which case such termination shall be deemed to be a termination for Owner's convenience pursuant to Section 20.2.

20. TERMINATION OR SUSPENSION

20.1. Termination and Damages for Contractor Event of Default.

20.1.1. Consequences of Contractor Event of Default.

In the event of a Contractor Event of Default, and Contractor's failure to cure the Contractor Event of Default as provided by Section 19.2, Owner may terminate Contractor's Work by Notice to Contractor, and without limiting Contractor's right to assert any defenses with respect to such actions or costs Contractor shall be liable to Owner for any and all actual costs and damages to Owner as a result of such Contractor Event of Default, it being understood that, to the extent that the actual costs of completing the Work, including out-of-pocket costs paid by Owner in obtaining a replacement contractor, replacement Equipment or services, or otherwise to perform the Work or for professional services required as a consequence of such Contractor Event of Default, exceed those costs that would have been payable to Contractor but for such Contractor Event of Default, Contractor shall be obligated to pay the difference to Owner, provided, however, that the Parties acknowledge and agree that nothing in this Section 20.1 is intended to, and shall not, increase or otherwise affect Contractor's aggregate limit of liability set forth in Section 30.2(a). Subject to the proviso in the immediately preceding sentence, Contractor shall, in addition to such actual costs, remain liable for Delay Liquidated Damages under Article 15 to the extent accrued prior to the date of termination. In addition, in the event of a Contractor Event of Default, no additional payments to Contractor shall be deemed amounts due or owing until the liability of Contractor is determined in accordance with this Agreement, if any, under this Section 20.1. Upon determination of the total cost of the Work, and costs and damages caused by Contractor Event of Default, Owner shall Notify Contractor in writing of the amount, if any, that Contractor shall pay Owner subject to Contractor's right to assert any defenses with respect to such actions or costs. Contractor acknowledges, subject to Contractor's aggregate limit of liability set forth in Section 30.2(a), that in the event of such a termination, Owner may enter into a contract for the completion of the Project with substantially the same deliverables, completion deadlines and liquidated damages as are provided for in this Agreement, taking into account additional time required to procure such contract and to allow for transition to a new contractor when determining completion deadlines that may be different from those set forth in this Agreement, and that the cost to complete the Project in such event may greatly exceed the cost hereunder, including amounts paid to induce any replacement contractor to keep substantially similar completion deadlines, deliverables and liquidated damages as provided for in this Agreement and/or warrant any Work performed by Contractor prior to termination.

20.2. Termination for Convenience.

20.2.1. Termination for Convenience; General.

Owner may in its sole discretion terminate the Work or this Agreement in whole or in part without cause at any time by giving Notice of termination to Contractor, to be effective upon such Notice by

Owner or upon such other termination date specifically identified by Owner therein. If Owner terminates such Work without cause or for any cause other than a Contractor Event of Default specified in Section 20.1, then Owner and Contractor shall have the following rights, obligations and duties:

(a) Cancellation Charge.

If such Work is terminated pursuant to this Section 20.2, as total compensation for such Work performed through the effective date of such termination and demobilization of such Work, Owner shall pay to Contractor only: (x) any amount owing under any unpaid, undisputed invoice prior to the effective date of such termination; and (y) after the effective date of termination, an amount equal to Contractor's actual, demonstrable and reasonable direct costs (plus five percent (5%) of such costs for overhead and profit) incurred in the demobilization of such Work, plus actual, documented, reasonable and unavoidable non-recoverable third-party costs incurred by Contractor as a direct result of such termination plus five percent (5%) of such costs, including costs of materials for which the Contractor is liable to take delivery of and which could not be disposed and excluding any such cancellation fees of any Affiliates of Contractor, plus or as a direct result of such termination, plus two and one half percent (2.5%) of the Contract Price, as may be adjusted under this Agreement, minus any portion of the Contract Price otherwise paid pursuant to this Agreement, but less salvage value of materials or Equipment which Owner elects not to accept.

(b) Contractor Cooperation.

Contractor shall cooperate with Owner reasonably and in good faith to minimize Contractor's expenses associated with a termination under this Section 20.2, including taking reasonable action requested by Owner to reduce Suppliers' or Subcontractors' cancellation charges in connection with such termination. Promptly upon receipt of the Notice of termination pursuant to this Section 20.2, Contractor shall cease all operations, or cease those operations specified by Owner in the Notice. Contractor shall place no further subcontracts or orders for materials, services, Equipment or facilities, except as necessary to complete any portion of the Work that is not terminated. Contractor shall assign to Owner, if requested, all right, title and interest of Contractor under any subcontracts that Owner elects in writing to accept. Contractor shall terminate all subcontracts that relate to the terminated Work, and that Owner does not elect in writing to accept by assignment. As requested in writing by Owner, Contractor shall, upon termination under this Section 20.2, grant title and, upon Owner's payment of any amount owing under any unpaid, undisputed invoice prior to the effective date of such termination, deliver to Owner the Work in progress, completed Work, supplies, Equipment and material produced or acquired for the terminated Work, and any completed or partially completed plans, drawings, as-built drawings, construction information and other property that, if the Work had been completed, would be required to be delivered to Owner. In relation to the foregoing, Contractor shall take any action that may be reasonably necessary, or that Owner may reasonably direct in writing, in each case at Owner's cost, for the protection and preservation of the Work. Upon any such termination Owner shall return to Contractor all Contractor Credit Support that Owner then holds to the extent that such Contractor Credit Support has not as of the termination date been previously called upon by Owner.

20.2.2. Claims for Payment.

All claims for payment by Contractor under this Section 20.2 must be made within sixty (60)days after the effective date of termination hereunder. Owner shall make payments under this Section 20.2 in accordance with and subject to the requirements of Article 6.

20.3. **Suspension by Owner**

20.3.1. Suspension for Convenience.

Owner may suspend performance of the Work at any time for its convenience by giving five (5) Business Days' advance Notice thereof to Contractor ("**Suspension for Convenience**"). Such Suspension for Convenience shall continue for the period specified in the suspension Notice. The Contract Price shall be

adjusted and Contractor shall be entitled to such other relief as provided in Section 20.3.4 to reflect any additional increased costs of and delays to the Work Schedule that Contractor actually and demonstrably suffers or incurs from any such suspension. At any time after the effective date of the suspension, Owner may require Contractor to resume performance of the Work on ten (10) Business Days' Notice.

20.3.2. Suspension for Cause.

(a) Stop Work Suspension for Cause.

Owner may (i) order Contractor to stop performance immediately of that portion of the Work that causes an imminent danger to life or damage to property or (ii) by giving ten (10) Business Days' advance Notice thereof to Contractor, suspend performance of all or a portion of the Work due to a Contractor Event of Default (each a "**Suspension for Cause**"). If the Work is suspended as a result of a Suspension for Cause, then, without limiting Contractor's right to assert any defenses with respect to such suspension, Contractor shall not be entitled to any schedule extensions or change in the cost of the performance of the Work, pursuant to Article 16, for the associated impact of such Suspension for Cause, except to the extent a Suspension for Cause identified in part (i) above arises as a result of a Force Majeure Event or an Excusable Event. Owner's right to suspend performance of the Work under this Section 20.3.2(a) shall be without prejudice to any other right or remedy Owner may have under this Agreement.

(b) Resumption of Work.

In the case of a Suspension for Cause pursuant to Section 20.3.2(a) once the cause of such Suspension for Cause has been resolved by Contractor in accordance with the instructions of Owner in its Notice of Suspension for Cause as provided above or by other reasonable means identified by Contractor and agreed to by Owner, such agreement not to be unreasonably conditioned, delayed, or withheld, and if this Agreement is still in effect, then if Owner does not re-order the resumption of the suspended portion of the Work after five (5) Business Days' Notice, any further delay to the resumption of the Work shall be considered an Owner-Caused Delay. In the event that any such Suspension for Cause is subsequently determined not to have been properly issued in accordance with the provisions of Section 20.3.2(a), then such suspension shall be deemed to have been a Suspension for Convenience ordered pursuant to Section 20.3.1, and Owner shall make any payments due as a result of the same under such Section.

20.3.3. Contractor's Termination Right.

If, at the end of the suspension period specified pursuant to Section 20.3.1, Owner has not requested a resumption of the Work or has not Notified Contractor of any extension of the suspension period (but in no event beyond one hundred eighty (180) days in the aggregate for all such suspensions), Contractor may, upon ten (10) days' advance Notice to Owner, terminate this Agreement, and such termination shall be deemed to be a termination for Owner's convenience pursuant to Section 20.2, and Contractor's sole and exclusive remedies whether in tort, contract or otherwise against Owner shall be the same as, and shall be strictly limited to, those afforded in Section 20.2.

20.3.4. Extension of Time and Compensation Rights.

In the case of any suspension under Section 20.3.1:

(a) the Work Schedule, Milestone Items and the Substantial Completion Guaranteed Date shall be extended by a period no less than the suspension period, plus a reasonable period for demobilization and remobilization, as mutually agreed upon by Contractor and Owner (plus an additional period, to the extent necessary, to compensate for the effect such suspension could be expected to have on the schedule for performing the PV Capacity Test in order to provide the necessary stabilization period to mitigate any

transient effects on the PV Modules resulting from being stored, idle or unutilized);

(b) Owner shall pay Contractor for those reasonable costs and cost increases, plus five percent (5%) of such costs, actually incurred during the suspension period that are documented by Contractor to the reasonable satisfaction of Owner, to the extent directly attributable to the suspension, and that are incurred:

(i) for the purpose of safeguarding or storing the Work and the Equipment at the point of fabrication, in transit, or at the Site;

(ii) for personnel, Subcontractors or Equipment, the payments for which are continued during the suspension period;

(iii) for costs of demobilization and remobilization of Contractor and its Subcontractors, including suspension costs set forth in any subcontract, purchase order or other agreement;

(iv) for rescheduling the Work (including penalties or additional payments to Subcontractors for the same) which may include reasonable allowances for overhead and profit.

20.4. **Claims for Payment.**

All claims by Contractor for compensation or extension of time under Sections 20.3.2 and 20.3.4 must be made within sixty (60) days after Notice from the Owner that the Work has been terminated or the suspension period has ended, respectively.

21. INSURANCE

21.1. **General.**

21.1.1. Contractor Insurances.

Contractor shall procure at its own expense and maintain in full force and effect for the Project the minimum insurance coverages and limits as required under Section 21.2 of this Agreement, with responsible insurance companies authorized to do business in the United States.

21.1.2. Owner Insurances.

Owner shall procure at its own expense and maintain in full force and effect for the Project as required under this Agreement, with responsible insurance companies authorized to do business in the United States, the types and limits of insurance as set forth in Section 21.3.

21.1.3. Financial Strength of Insurance Providers.

Such insurance companies shall have an A.M. Best Insurance financial strength rating of A VIII or better in the latest edition of A.M. Best.

21.1.4. Capitalized Terms.

Capitalized terms used in this Article 21 and not otherwise defined in this Agreement shall have the meanings generally ascribed to them in the commercial insurance industry in the United States.

21.1.5. Additional Insurances.

Each Party, at its own cost, may purchase any additional insurance it believes necessary to

protect its interests, but these costs cannot be passed on to the other Party.

21.2. **Contractor's Insurance.**

Contractor's obligations to obtain and maintain in full force and effect the insurance policies specified in this Article 21 shall be subject to the specified coverage being available on commercially reasonable terms. If any such coverage is not available, the Parties shall work together to find a mutually acceptable alternative.

21.2.1. Workers' Compensation and Employer's Liability Insurance.

Contractor shall maintain workers' compensation insurance and such other forms of insurance which Contractor is required to maintain in order to comply with statutory limits under workers' compensation laws of any applicable jurisdiction in the United States (and any other location in which the Work is to be performed), where applicable, and employer's liability (including occupational disease) coverage with limits of at least One Million Dollars ($1,000,000) per accident, One Million Dollars ($1,000,000) for disease, and One Million Dollars ($1,000,000) for each employee, which shall cover all of Contractor's employees, whether full-time, leased, temporary or casual, who are engaged in the Work.

21.2.2. Commercial General Liability Insurance

Contractor shall maintain commercial general liability insurance written on an occurrence basis and with a combined single limit of at least One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) per project annual aggregate and Two Million Dollars ($2,000,000) products and completed operations per project annual aggregate. Aggregate limits shall reinstate annually, be on a per project basis, dedicated entirely to the project or location for which Work is to be provided under this Agreement, and shall not be shared with any other obligations of Contractor. Such insurance shall include coverage for premises/operations liability, for products/completed operations, broad form contractual liability for written contracts, broad form property damage and personal injury liability, and independent contractors liability for Work performed on the Site and off the Site. With respect to the performance of construction activities for the Project, Contractor shall maintain extended completed operations coverage, for at least ten (10) years after Owner's final acceptance of the Work for the Project either through policies in force or through an extended reporting period endorsement. Contractor shall certify that such coverage is in place for up to ten (10) years after the Project is completed within thirty (30) days after Contractor's receipt of a written notice from Owner requesting such certification. Such insurance shall provide severability of interests or cross liability provisions permitting one insured to bring a claim against another insured, and shall be endorsed to include Owner and its Affiliates and their respective directors, officers, managers, representatives, agents and employees or any other parties that are related to the Project and that Owner is contractually obligated to include as additional insureds prior to loss, limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended. Such additional insured status shall apply regardless of the enforceability of the indemnity provisions in this Agreement. Such insurance maintained by Contractor shall be primary with respect to the interest of Owner, and any other insurance or self-insurance maintained by Owner or its Affiliates is in excess and not contributory to Contractor's insurance in all instances regardless of any like insurance that Owner or any of its Affiliates may have. Minimum insurance can be satisfied through a combination of primary and umbrella/excess liability insurance policies.

21.2.3. Commercial Automobile Liability Insurance.

Contractor shall maintain commercial automobile liability insurance (including coverage for owned, non-owned and hired automobiles) covering vehicles used by Contractor in connection with the Work in an amount of at least One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage. Contractor's automobile liability insurance coverage shall contain appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Laws. Such insurance shall be endorsed to include Owner and its Affiliates and their respective directors, officers, managers, representatives, agents, employees or any other parties that are related to the Project and that Owner is

contractually obligated to include as additional insureds prior to a loss, limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended. Such additional insured status shall apply regardless of the enforceability of the indemnity provisions in this Agreement. Such insurance maintained by Contractor shall be primary with respect to the interest of Owner, and any other insurance or self-insurance maintained by Owner or its Affiliates is in excess and not contributory to Contractor's insurance policies in all instances regardless of any like insurance coverage that Owner or any of its Affiliates may have. Minimum insurance can be satisfied through a combination of primary and umbrella/excess liability insurance policies.

21.2.4. Umbrella or Excess Liability Insurance.

Contractor shall maintain umbrella/excess insurance on an occurrence basis covering claims in excess of the underlying insurance described in Sections 21.2.2 and 21.2.3, in the amount of at least Twenty Million Dollars ($20,000,000) per occurrence in excess of the primary commercial general liability, commercial automobile liability, and employer's liability insurance (with coverage for completed operations for the Project to be in place throughout the performance of the Work for the Project and for ten (10) years after Final Completion of the Project either through policies in force or through an extended reporting period endorsement). Contractor shall certify that such coverage is in place for up to ten (10) years after the Project is completed within thirty (30) days after Contractor's receipt of a written notice from Owner requesting such certification. Insurance coverages and limits required herein should not in any way limit the extent of Contractor's responsibilities and liabilities specified elsewhere in this Agreement. Such insurance shall be written as follow-form or with an insurance coverage form that provides coverage that is at least as broad as the primary insurance policies, and shall satisfy the maintenance of the required limits either through a single umbrella liability insurance policy or a combination of umbrella liability and excess liability insurance policies.

21.2.5. Professional Liability Insurance.

If the Work includes engineering, architectural, design or other professional services, Contractor shall secure and maintain, professional liability insurance (errors and omissions), with no exclusions for bodily injury or property damage, with a minimum single limit of Five Million Dollars ($5,000,000), per claim and per annual aggregate with coverage remaining in place throughout the performance of the Work. Such insurance may be written on a claims made basis rather than an occurrence basis as long as the policy (a) has a retroactive date prior to the date of Work commencement and (b) is maintained by Contractor throughout the performance of the Work for the Project and for at least three (3) years after Final Completion of the Project either through ongoing policy renewals or an extended reporting period.

21.2.6. Pollution Liability Insurance.

Contractor shall maintain pollution liability insurance or the equivalent, with a minimum limit of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) annual aggregate. Such insurance shall include coverage for pollution losses, including but not limited to bodily injury, property damage, and financial loss arising out of Contractor's operations and completed operations and for sudden and gradual pollution arising out of Contractor's performance under this Agreement. Such insurance shall add Owner and its Affiliates and their respective directors, officers, managers, representatives, agents, employees or any other parties that are related to a Project and that Owner is contractually obligated to include as additional insured prior to a loss as an additional insured with respect to Work performed under this Agreement, limited only to the extent required, if applicable, by NMSA 1978§ 56-7-1, as amended.

21.2.7. Equipment, Supplies and Materials.

All equipment, supplies and materials (a) belonging to Contractor or to any of its Subcontractors or (b) used by or on behalf of Contractor or any of its Subcontractors for its performance

hereunder which is not intended to become a permanent part of the completed Work shall be brought to and kept at the Site at the sole cost, risk and expense of Contractor or such Subcontractor, and Owner shall not be liable for loss or damage thereto.

21.3. **Owner's Insurance.**

Owner's obligation to obtain and maintain in full force and effect the insurance policies specified in this Article 21 shall be subject to the specified coverage being available on commercially reasonable terms. If any such coverage is not available, the Parties shall work together to find a mutually acceptable alternative.

21.3.1. Workers' Compensation Insurance and Employer's Liability Insurance.

In accordance with the laws of the State of New Mexico, Owner shall maintain in force workers' compensation insurance for all of its employees. Owner shall also maintain employer's liability coverage in an amount of not less than One Million Dollars ($1,000,000) per accident and per employee for disease. In lieu of such insurance, Owner may maintain a self-insurance program meeting the requirements of the State of New Mexico along with the required employer's liability insurance.

21.3.2. Commercial General Liability Insurance

Owner shall maintain commercial general liability insurance written on an occurrence basis and with a combined single limit of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) annual aggregate. Such insurance shall include coverage for products/completed operations, broad form contractual liability for written contracts, broad form property damage and personal injury liability, and independent contractor liability. In lieu of the insurance described in this Section 21.3.2, Owner may maintain a self-insurance program or alternative insurance program structure, including a combination of insured/self-insured.

21.3.3. Commercial Automobile Liability Insurance.

Owner shall maintain commercial automobile liability insurance (including coverage for owned, non-owned, and hired automobiles) covering vehicles used by Owner, including the loading or unloading of such vehicles, in an amount of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury, and property damage. Owner's automobile liability insurance coverage shall contain appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Laws. In lieu of the insurance described in this Section 21.3.3, Owner may maintain a self-insurance program.

21.3.4. Umbrella or Excess Liability Insurance.

Owner shall maintain umbrella/excess insurance on a claims-made basis covering claims in excess of the underlying insurance described in Sections 21.3.2 and 21.3.3 in the amount of Ten Million Dollars ($10,000,000) per occurrence in excess of the primary commercial general liability, automobile liability, and employer's liability insurance.

21.4. **Builder's All-Risk Insurance.**

A minimum of thirty (30) days prior to Contractor's commencement of its performance of the Work on the Site, Contractor shall obtain and thereafter at all times during performance of the Work for the Project expiring upon Substantial Completion of the Project, maintain, or cause to be maintained, builder's all-risk insurance. The completed value form shall specify the estimated completed value of the Project at the end of construction. The Builder's Risk Policy shall be endorsed to include: (A) named insured status for Owner and Contractor; (B) replacement cost coverage; (C) coverage for materials, supplies and equipment to be incorporated into the Project while such are located on-Site, in transit or while temporarily located off-Site for the purpose of repair, adjustment or storage at the risk of one of the insured parties; (D) permission for partial

occupancy or use of the premises; (E) ordinance or law coverage, including (i) coverage for loss to the undamaged portion of the building, (ii) demolition cost coverage, and (iii) increased cost of construction; and (F) a loss payable endorsement naming as loss payees Contractor and Owner as their interests may appear. Such insurance shall provide for a waiver of the insurer's right to subrogate against Owner and Contractor where contractually required. Contractor shall be responsible for payment of any deductible to the extent the loss arises from the negligence of Contractor or its Subcontractors. Owner shall furnish to Contractor prior to commencement of the Project evidence of such coverage being in place including the following as applicable: (i) insurance company name, (ii) policy number, (iii) policy period, (iv) per occurrence and aggregate limits, and (v) deductibles.

21.5. **Loss Payable**

Losses if any, covered by builder's all-risk shall be payable to Owner, Contractor, or any other parties that are related to the Project and that Contractor is contractually obligated to include as loss payees prior to a loss, as their respective interests may appear. Any insurance claim proceeds shall be applied to the restoration of the Project unless mutually agreed to otherwise by the Owner and Contractor. Any insurance proceeds remaining after payment of all restoration costs shall be applied to the Owner's account.

21.6. **Subcontractor Insurance**

Contractor shall require each of its Major Subcontractors performing work at the Site to obtain, maintain and keep in force during the time during which they are involved in performance of the Work, insurance coverage in accordance with the insurance requirements of Contractor set forth in Sections 21.2.1, 21.2.2, 21.2.3 and 21.2.4; provided, however, that the limits of any such Major Subcontractors' Umbrella Excess Liability Insurance policies otherwise maintained in accordance with the requirements under Section 21.2.4, shall not be less than Two Million Dollars ($2,000,000).

21.7. **Contractor Certificates.**

On or prior to the date that is thirty (30) days after the Notice to Proceed Date of the Project, Contractor shall furnish to Owner certificates of insurance from each insurance carrier showing that the above required insurance for the Project is in full force and effect, the amount of the carrier's liability thereunder, copies of all applicable additional insured and waiver of subrogation endorsements, and copies of endorsements from the applicable insurer, further providing that the insurance will not be canceled, materially changed or not renewed until the expiration of at least thirty (30) days (or ten (10) days in the case of cancellation due to non-payment of premiums) after notice of such cancellation, material change or non-renewal has been received by Owner. Contractor shall also be responsible for obtaining certificates of insurance for the insurances required to be maintained by such Major Subcontractor in accordance with Section 21.6 from each of the Major Subcontractors before such Major Subcontractor is allowed to commence Work and provide such certificates to the Owner upon request. Certificates of insurance submitted under this Section 21.7 shall be in form and content reasonably acceptable to Owner and shall provide that Owner and any Owner Financing Parties shall timely receive copies of any notices to Owner or Contractor under such policies of any default or other act or omission by Owner, Contractor or other insured parties that might invalidate, render unenforceable or result in a lapse of such policy in whole or in part. Certificates of each renewal of the insurance should also be delivered to Owner and any Owner Financing Party promptly after receipt.

21.8. **Owner Certificates.**

On or prior to Contractor's commencement of its performance of the Work on the Site, Owner shall furnish to Contractor certificates of insurance from each insurance carrier, showing that the above required insurance is in full force and effect and the amount of the carrier's liability thereunder.

21.9. **Cost of Premium.**

It is expressly agreed and understood that:

(a) the cost of premiums and deductibles for insurance required to be maintained by Contractor as set forth in this Article 21 and all Taxes thereon shall be borne by Contractor, and shall be endorsed to provide that Owner shall have no liability for the payment of any premium thereon; and

(b) that the cost of premiums and deductibles for insurance required to be maintained by Owner as set forth in this Article 21 and all Taxes thereon shall be borne by Owner.

21.10. **Owner's Rights to Provide Insurances.**

If Contractor fails to provide or maintain any insurance required of it hereunder, Owner shall have the right, but not the obligation, to provide or maintain any such insurance, and to deduct the cost thereof from any amounts due and payable to Contractor (including from any amounts due and payable to Contractor in respect of the Contract Price), or, if there are no such amounts due and payable to Contractor, Contractor shall reimburse Owner for such costs on demand. Should any of the policies required to be maintained by Contractor become unavailable or be canceled for any reason during the period of this Agreement, Contractor shall immediately procure replacement coverage. The failure of Contractor to procure and maintain such replacement coverage (so as to provide continuous coverage) shall constitute a material breach hereunder.

21.11. **No Limitation of Liability.**

The insurance coverages required of Contractor set forth in this Article 21 shall in no way affect, nor are they intended as a limitation of, Contractor's liability with respect to its performance of the Work. Insurance requirements in this Agreement are independent of Contractor's liability under this Agreement. The insurance coverages required of Owner set forth in this Article 21 shall in no way affect, nor are they intended as a limitation of, Owner's liability with respect to its performance of its obligations hereunder.

21.12. **Other Terms and Provisions.**

21.12.1.Omissions; Errors.

It is hereby understood and agreed that the coverages afforded by the insurance policies required of either Party set forth in this Article 21 shall not be invalidated or affected by any unintentional omissions or errors.

21.12.2.Notification.

Contractor and Owner shall Notify the other Party of any and all incidents giving rise to an insurance claim, and otherwise keep the other Party timely apprised of insurance claim proceedings. Contractor shall timely Notify Owner of a builders risk claim and each Party shall provide reasonable assistance in the investigation of any known accident or occurrence involving injury to any person or loss or damage to property, and reasonably cooperate with the companies involved in adjusting any claim by securing and giving evidence, and obtaining the participation and attendance of witnesses, in each case, reasonably required for the investigation or defense of any claim or lawsuit.

22. RISK OF LOSS OR DAMAGE

22.1. **Care, Custody and Control.**

Until the Substantial Completion Date, Contractor shall have care, custody and control of the Project; provided that upon Substantial Completion or the earlier termination of this Agreement and transfer of title to Owner pursuant to Article 18, Owner shall have care, custody and control of the Project to the extent of such

transfer of title.

22.2. **Risk of Loss.**

Until the Substantial Completion Date or the early termination of this Agreement as provided in Article 19 or 20, subject to the provisions of this Article 22, Contractor assumes risk of loss, and, without limitation of its right to make claims for relief pursuant to Article 8, full responsibility, for the cost of replacing or repairing any damage to the Project and the applicable Work (including the Equipment) and assumes risk of loss, and full responsibility, for the cost of replacing or repairing any damage to, any maintenance equipment (including temporary materials, equipment and supplies) which is purchased by Contractor for permanent installation in, or for use during the construction of, the Project (other than, for the avoidance of doubt, the Transmission Provider's Interconnection Facilities.

22.3. **Risk of Loss After Substantial Completion.**

Owner shall bear the risk of loss for, and full responsibility for, the cost of replacing or repairing any damage to the Project from and after its Substantial Completion Date or upon earlier termination of this Agreement.

23. INDEMNIFICATION

23.1. **Comparative Fault.**

Notwithstanding anything to the contrary herein, and to the extent permitted by Applicable Law, it is the intent of the Parties that where fault is determined to have been joint or contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to such Party's fault.

23.2. **By Contractor.**

Subject to Section 23.1, to the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless, Owner and its employees, agents, partners, Affiliates, shareholders, members, directors, officers, managers and permitted assigns (each, an "**Owner Indemnitee**"), from and against the following:

(a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) of Contractor or any Subcontractor during the performance of the Work or from Contractor or any Subcontractor failing to perform any of its obligations under this Agreement, or any curative action under any warranty following performance of the Work, of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(b) all Losses that directly arise out of or result from:

(i) all claims for payment of compensation for Work performed hereunder, whether or not reduced to a lien or mechanics lien, filed by Contractor or any Subcontractors, or other persons performing any portion of the Work, including reasonable attorneys' fees and expenses incurred by any Owner Indemnitee in discharging any Contractor Lien, except to the extent of a breach by Owner in relation to any obligation it has to make a payment under this Agreement;

(ii) employers' liability or workers' compensation claims filed by any employees or agents of Contractor or any of its Subcontractors; and

(iii) all outstanding claims for payment of compensation for Work performed hereunder filed by any Subcontractors that are listed in the Waiver and Release Upon Final Payment,

whether or not reduced to a lien or mechanics lien, including reasonable attorneys' fees and expenses incurred by any Owner Indemnitee in discharging any Contractor Lien, except to the extent that any such claims relate to a good faith Dispute between Contractor and Owner;

(c) all Losses arising from third-party claims, including claims by Subcontractors and claims for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of Contractor or any of its Subcontractors to comply with the terms and conditions of Applicable Laws during their performance of the Work;

(d) all fines or penalties issued by any Governmental Authority that directly arise out of or result from the failure of the Project, as designed, constructed and completed by Contractor or any Subcontractor, to be capable as of the Final Completion Date, of operating in compliance with all Applicable Laws or the conditions or provisions of all Applicable Permits (to the extent such Applicable Permits relate to the Work), in each case, as in effect as of the Final Completion Date;

(e) any and all fines, penalties or assessments issued by any Governmental Authority that Owner may incur as a result of executing any applications at Contractor's request;

(f) all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Contractor to pay, as and when due, all Taxes, fees or charges of any kind imposed by any Governmental Authority for which Contractor is obligated to pay pursuant to the terms of this Agreement;

(g) all Losses arising from claims by any Governmental Authority claiming Taxes based on gross receipts or on income of Contractor, any of its Subcontractors, or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor, any of its Subcontractors, or any of their respective agents or employees under this Agreement; and

(h) all Losses, including claims for property damage or bodily injury or death, whether or not involving damage to the PV Power Plant, Energy Storage System, or the Site, that arise out of or result from the use of Contractor Hazardous Materials (other than arising as a result of unlawful releases or spills described in Section 23.3(f)(ii), whether lawful or unlawful). Such use of or contamination by Contractor Hazardous Materials include:

(i) the storage, transportation, processing or disposal of such Contractor Hazardous Materials; and

(ii) any environmental condition caused by such Contractor Hazardous Materials that is prohibited by Governmental Authorities.

23.3. **By Owner.**

Subject to Section 23.1, Owner shall defend, indemnify and hold harmless Contractor and its employees, agents, partners, Affiliates, shareholders, members, directors, officers, members, managers and permitted assigns (each, a "**Contractor Indemnitee**") from and against the following:

(a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) during the performance by Owner of its obligations or failing to perform any of its obligations under this Agreement or any Affiliate, or anyone directly or indirectly employed by either of them, or anyone for whose acts such Person may be liable;

(b) all Losses arising from third-party claims, including claims for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of

Owner or any of Owner's Separate Contractors or anyone directly or indirectly employed by any of them (other than Contractor or its Subcontractors), or anyone for whose acts such Person may be liable, to comply with the terms and conditions of Applicable Laws or Applicable Permits;

(c) all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Owner to pay, as and when due, all Taxes, fees or charges of any kind imposed by any Governmental Authority for which Owner is obligated to pay pursuant to the terms of this Agreement;

(d) all Losses that directly arise out of or result from employers' liability or workers' compensation claims filed by any employees or agents of Owner; and

(e) all Losses, including claims for property damage or personal injury or death (including emotional distress) that directly or indirectly arise out of or result from:

(i) the presence or existence of Hazardous Materials (including any Pre-Existing Contamination) at the Site (A) brought onto or generated at the Site on or before the Effective Date; (B) brought onto or generated at the Site by Owner or any of Owner's Separate Contractors (other than Hazardous Materials that were brought onto the Site by or delivered to Contractor or any Subcontractor to be handled by the same in the course of performing the Work); or (C) which migrated onto the Site from another location (other than such Hazardous Materials that were previously in the care, custody or control of Contractor or any Subcontractor), except to the extent the remediation of any such Hazardous Materials is part of the Work; or

(ii) the unlawful release or spill by Owner or its Affiliates or any of Owner's Separate Contractors of Hazardous Materials, such Hazardous Materials otherwise having been brought onto the Site by Contractor or any Subcontractor in accordance with the terms of this Agreement and all Applicable Laws.

23.4. **Patent Infringement and Other Indemnification Rights.**

Contractor shall defend, indemnify, and hold harmless the Owner Indemnitees against all Losses arising from any Intellectual Property Claim. If Owner provides Notice to Contractor of the receipt of any such claim, Contractor shall, at its own expense, settle or defend any such Intellectual Property Claim and pay all damages and costs, including reasonable attorneys' fees, awarded against Owner Indemnitees and at Contractor's option either: (a) procure for Owner, or reimburse Owner for procuring, the right to continue using the infringing service, Equipment or other Work, as the case may be; (b) modify the infringing service, Equipment, or other Work, as the case may be, so that the same becomes non-infringing; or (c) replace the infringing service, Equipment or other Work with non-infringing service, Equipment or other Work, as the case may be. If Owner or Contractor is temporarily or permanently enjoined from completing the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, then Contractor shall promptly use its Commercially Reasonable Efforts to have such injunction removed and to take one or more of the actions under the preceding clauses (a), (b) or (c), provided, that in no case shall Contractor take any action that adversely affects Owner's continued use and enjoyment of the applicable service, Equipment, or other Work, as the case may be, without the prior written consent of Owner. Owner's acceptance of the Contractor Deliverables, supplied materials and equipment or other component of the Work shall not be construed to relieve Contractor of any obligation hereunder. Notwithstanding any provision of this Agreement to the contrary, no Milestone Item completion date or other key date shall be extended due to any injunction described in this Section 23.4. However, notwithstanding anything in this Agreement to the contrary, Contractor shall not have such indemnity obligations or any other liability hereunder for any Intellectual Property Claim to the extent arising from or in connection with any modification of the Work by Owner or any third party, including Owner's Separate Contractors, Owner's variation from Contractor's recommended procedures for using the Work, or Work manufactured to designs and specifications of Owner. Owner shall indemnify, defend and hold harmless Contractor and the Contractor Indemnitees from and against any and all Losses arising from any Intellectual

Property Claim. If any such item is held to constitute an infringement, and the use of such item is required to perform Contractor's work and is enjoined, Owner shall, at its own expense (in addition to owner's indemnification obligation described above and any other remedies Contractor may have under this agreement), either procure the right for Contractor to use the infringing item, or replace the same with a substantially equal but non-infringing item, or modify the same to be non-infringing, provided, however, that any substitute or modified item shall meet all the requirements and be subject to all the provisions of this Agreement.

23.5. **Electronic Data Files.**

Except where any Contractor Deliverable shall be in the form of an electronic data file, any other electronic data files furnished to Owner pursuant to this Agreement are provided only for the convenience of Owner. Owner recognizes that such electronic data files not provided to Owner as a Contractor Deliverable may not be adequate or appropriate for Owner's needs. In the case of any discrepancies between the Contractor Deliverable represented by electronic data files and the plotted hardcopy of such files bearing the seal of Contractor's registered professional engineer, the sealed hardcopy shall govern.

23.6. **Claim Notice.**

An Indemnitee shall provide Notice to the indemnifying Party, within ten (10) days after receiving Notice of the commencement of any legal action or of any claims or threatened claims against such Indemnitee in respect of which indemnification may be sought pursuant to the foregoing provisions of this Article 23 or any other provision of this Agreement providing for an indemnity (such Notice, a "**Claim Notice**"). The Indemnitee's failure to give, or tardiness in giving, such Claim Notice will reduce the liability of the indemnifying Party only by the amount of damages attributable to such failure or tardiness, or to the extent the indemnifying Party is prejudiced by such failure or delay, but shall not otherwise relieve the indemnifying Party from any liability that it may have under this Agreement. In case any such claim or legal action shall be made or brought against an Indemnitee and such Indemnitee shall Notify (by sending a Claim Notice) the indemnifying Party thereof, the Indemnitee may by such Claim Notice require the indemnifying Party to assume and control the defense of the claim (other than any Intellectual Property Claim, which shall be controlled by Contractor unless otherwise agreed by the Parties) that is the subject of such Claim Notice, including the employment of counsel reasonably acceptable to the Indemnitee, and the indemnifying Party shall pay all expenses of the conduct of such defense. The Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, but the fees and expenses of such counsel shall be borne by the Indemnitee unless the indemnifying Party agrees otherwise; provided, however, that if the named parties to any such proceeding (including any impleaded parties) include both the Indemnitee and the indemnifying Party, and the indemnifying Party requires that the same counsel represent both the Indemnitee and the indemnifying Party, and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, then the Indemnitee shall have the right to retain its own counsel at the cost and expense of the indemnifying Party. If the indemnifying Party fails to assume or diligently prosecute the defense of any claim in accordance with the provisions of this Section 23.6, then 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 reasonable amount determined to be owed by Indemnitee pursuant to such claim, shall be borne by the indemnifying Party, provided that the indemnifying Party shall be entitled, at its expense, to participate in (but not control) such defense. Subject to all of the foregoing provisions of this Section 23.6, as between the Parties, (a) the indemnifying Party shall control the settlement of all claims, in coordination with any insurer as required under the applicable insurance policies in Article 21 as to which it has assumed the defense; provided, however, that to the extent the indemnifying Party, in relation to such insurer, controls settlement: (i) such settlement shall include a dismissal with prejudice of the claim and an explicit release from the party bringing such claim or other proceedings of all Indemnitees; and (ii) the indemnifying Party shall not conclude any settlement without the prior approval of the Indemnitee, which approval shall not be unreasonably withheld or delayed; and (b) except as provided in the preceding sentence concerning the indemnifying Party'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 indemnifying Party, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless such Indemnitee reasonably believes that the matter in question involves potential criminal liability against such Indemnitee. The Indemnitee shall provide reasonable assistance to the indemnifying Party when the indemnifying Party so requests, at the indemnifying Party's expense, in connection with such legal action or claim, including executing any powers-of-attorney or other documents required by the indemnifying Party with regard to the defense or indemnity obligations.

23.7. **Survival of Indemnity Obligations.**

The indemnities set forth in this Article 23 relating to the Project shall survive the Final Completion Date or the earlier termination of this Agreement for a period expiring two (2) years following the Final Completion Date or said termination, whichever first occurs. All Claim Notices must be delivered, if at all, to the applicable Party prior to the expiration of such two (2) year period. If any Claim Notice is made within such two (2) year period, then the indemnifying period with respect to all claims identified in such Claim Notice (and the indemnity obligation of the Parties hereunder with respect to such claim) shall extend through the final, non-appealable resolution of such claims. For purposes of clarification hereunder, without limiting the other rights granted hereunder to either Party, a Party may enforce the indemnity provisions hereunder pursuant to the provisions of Article 31 without having to declare an Owner Event of Default or a Contractor Event of Default, as applicable.

23.8. **Limitations on Indemnification Obligations.**

Notwithstanding anything to the contrary in this Agreement, no claim for indemnity shall be brought pursuant to this Article 23 until the Losses incurred or suffered by the indemnified Person hereunder exceed Twenty-Five Thousand Dollars ($25,000) in the aggregate, exclusive of Taxes. Once such Losses exceed the threshold set forth in the preceding sentence, the indemnifying Party shall be responsible for all Losses, not merely those Losses in excess of such threshold.

24. CONFIDENTIAL INFORMATION

24.1. **Confidential Information.**

As used in this Agreement, "**Disclosing Party**" refers to Contractor whenever it is disclosing information to Owner and to Owner whenever it is disclosing information to Contractor. "**Receiving Party**" refers to Contractor whenever it is receiving information from Owner and to Owner whenever it is receiving information from Contractor. Each Party shall, and shall use its Commercially Reasonable Efforts to cause its Representatives, as hereinafter defined, and Affiliates to, keep confidential all information marked as "Confidential" in advance of disclosure, as well as proprietary, non-public or confidential information (in any form) concerning the business, operations and assets of Owner or Contractor (as the case may be), or their respective Affiliates provided to the other Party, including the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection with the performance of the Work under this Agreement, or any related subsequent agreement, designs, drawings, specifications, techniques, models, data, documentation, manuals, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, business plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets (collectively, "**Confidential Information**"). Confidential Information shall not include information that:

(a) is known to Receiving Party prior to obtaining the same from Disclosing Party as reflected by the written records of Receiving Party;

(b) is in the public domain at the time of disclosure by Disclosing Party;

(c) becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party, provided that, to Receiving Party's knowledge, such source is not prohibited from transmitting such information by a contractual, legal, or other obligation;

(d) can be shown by Receiving Party to have been independently developed by its employees, officers, directors, attorneys, auditors, advisors and/or consultants (collectively, "**Representatives**") without access to the Confidential Information;

(e) is necessary to be disclosed to auditors, taxing authorities, or accountants preparing tax reports and filings;

(f) is required to be disclosed under Applicable Law, stock exchange requirements or by Governmental Authorities, including in connection with any approval sought from, filing with, request for information from, or compliance obligation imposed by, any Governmental Authority; or

(g) is approved for public release by express prior written consent of an authorized officer of Disclosing Party.

24.2. **Use of Confidential Information.**

(a) Receiving Party hereby agrees that it shall use the Confidential Information solely for the purpose of performing its obligations under this Agreement and not in any way detrimental to Disclosing Party, or its Affiliates. Receiving Party agrees to use the same degree of care Receiving Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Receiving Party shall keep confidential and not disclose the Confidential Information. Owner and Contractor shall cause each of their Representatives and Subcontractors to become familiar with, and abide by, the terms of this Section 24.2.

(b) Notwithstanding the provisions of this Section 24.2, Receiving Party may disclose any of the Confidential Information if, but only to the extent, that, based upon reasonable advice of counsel, Receiving Party is required to do so by the disclosure requirements of any Applicable Law. Prior to making or permitting any such disclosure, Receiving Party shall provide Disclosing Party with prompt written Notice of any such requirement so that Disclosing Party (with Receiving Party's assistance if and to the extent reasonably requested) may seek a protective order or other appropriate remedy, at Disclosing Party's sole cost and expense, unless such Notice is prohibited by any Applicable Law.

(c) Subject to Section 24.2(b), Receiving Party shall not, without the prior written consent of Disclosing Party, disclose to any third party the fact that such Confidential Information has been made available to Receiving Party. Further, and notwithstanding the foregoing, (i) Contractor may provide any and all information required by (x) its Representatives, Affiliates or then existing Subcontractors and insurance agents that is necessary to complete the Work to such Subcontractors and insurance agents and (y) Contractor Financing Parties and their representatives to the extent necessary to obtain financing for the Work, in each case without the consent of Owner; provided that Contractor shall be responsible for any breaches of any Subcontractors, insurance agents or Contractor Financing Parties of the confidentiality provisions of this Section 24.2; and (ii) Owner may provide any and all information (x) to its Representatives or then existing or prospective successors or assigns; (y) required by its other contractors and insurance agents or insurers that is necessary to perform Owner's obligations under this Agreement; and (z) required by Owner Financing Parties and their representatives, in each case without the consent of Contractor.

24.3. **Return of Confidential Information.**

(a) At any time upon the request of Disclosing Party, Receiving Party shall promptly deliver to Disclosing Party or destroy at Receiving Party's option (with such destruction to be certified by Receiving Party) all documents (and all copies thereof, however stored) furnished to or prepared by Receiving Party that contain Confidential Information and all other documents in Receiving Party possession that contain or that are based on or derived from Confidential Information; provided, however, that the Receiving Party may retain one copy of such Confidential Information solely for the purpose of complying with its audit and document retention policies, and provided, further, that all such retained Confidential Information shall be held subject to the terms and conditions of this Agreement.

(b) Notwithstanding the return or destruction of all or any part of the Confidential Information relating to the Project, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to such specific Confidential Information until the date that is three (3) years after the earlier of (i) the Final Completion Date or (ii) the termination of this Agreement.

24.4. **Confidential Information Remedy.**

The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Article 24 and the obligations of each Party under this Article 24 are specifically enforceable. Accordingly, the Parties agree that a breach or threatened breach of this Article 24 by either Party, shall entitle the other Party to seek an injunction preventing such breach, without the necessity of proving the inadequacy of damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to such Party.

25. INVENTIONS AND LICENSES

25.1. **Invention, License.**

Any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, development or discovery (collectively, "**Invention**"), whether or not patentable, copyrightable or entitled to legal protection as a trade secret or otherwise, that Contractor may conceive, make, develop, create, reduce to practice or work on, in whole or in part, in the course of performing the Work, shall be owned and retained by Contractor. Contractor hereby grants, and shall require its Subcontractors to grant, to Owner a paid-up, irrevocable, perpetual, non-transferable (other than to transferees of the Project), nonexclusive, royalty-free license to use all Inventions, Confidential Information or other proprietary rights, intellectual property and specialized knowledge of Contractor that, in each case, form a part of the Work for Owner's use to the extent reasonably necessary for the operation, maintenance, repair, or decommissioning of the Project or components thereof, at any time. Notwithstanding the foregoing, Owner can use any Affiliate of Owner or subcontractor or other agent retained by Owner to the extent reasonably necessary to exercise these rights solely on behalf of Owner. Contractor shall, prior to directing any Subcontractor to produce any design or engineering work in connection with the Project, obtain a valid license of any such Inventions, specialized knowledge or other proprietary property from such Subcontractor in terms substantially similar to those that obligate Contractor to Owner as expressed in this Section 25.1. Except as specifically stated herein, no other license in such patents and proprietary information is granted pursuant to this Agreement.

25.2. **Suitability of Contract Design, Engineering and Computer Programming Information.**

All Contractor Deliverables and computer software for the Project prepared by Contractor pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Without any limitation on the provisions set forth in Article 24, any such unauthorized reuse without prior written verification or adaptation by Contractor for the specific purpose intended will be at Owner's sole risk and

without liability or legal exposure to Contractor.

25.3. **Contractor Deliverables.**

Subject to Section 25.1, the Contractor Deliverables accumulated or developed by Contractor, its employees or any Subcontractors shall become the property of Owner upon Contractor's receipt of payment of the Contract Price as provided in this Agreement, whether or not delivered by Contractor. Contractor will maintain ownership of all copyrights and other intellectual property contained within the Contractor Deliverables.

25.4. **Software Licenses.**

To the extent Contractor purchases any software to be incorporated into the Project, which software is necessary or otherwise desirable for the operation of the Project after Substantial Completion, Contractor shall register Owner as the licensee of such software with the applicable Subcontractor.

26. ASSIGNMENT

26.1. **Assignment to Other Persons.**

Except as otherwise provided in this Section 26.1, neither Party may assign or otherwise transfer this Agreement to any third party without the prior written consent of the other Party; which consent shall not be unreasonably withheld or delayed; provided, however, that nothing in this Agreement shall prevent either Party from engaging Affiliates or subcontractors in connection with the performance of its obligations under this Agreement (other than its respective payment obligations). Notwithstanding the foregoing, (a) Owner may (i) collaterally assign its rights, title and interest under this Agreement to any Owner Financing Party, who may further assign such rights, title and interest under this Agreement in accordance with the foregoing upon foreclosure or (ii) assign its rights, title and interest under this Agreement in connection with a synthetic lease, sale-leaseback or other similar financing arrangement for the Project and, in each case, in connection therewith, Contractor shall execute and deliver any usual and customary consents, legal opinions or other documents reasonably requested by Owner (which shall include customary additional cure periods for the benefit of Owner Financing Parties (not to exceed, in the aggregate, ten (10) additional Business Days)); provided, however, that (x) Contractor shall not be obligated without a Change in Work to accept any undertaking imposed by any such Owner Financing Party which will increase Contractor's obligations under this Agreement and, (y) if Owner requests that Contractor provide one or more legal opinions, each such opinion will be provided at Owner's cost; and (b) Owner may assign this Agreement to any Affiliate of Owner, provided that such assignment does not impair the applicability or impact of Owner's Parent Guaranty.

26.2. **Indemnitees; Successors and Assigns.**

Upon any assignment by either Party hereunder, the definition of Owner Indemnitee or Contractor Indemnitee, as applicable, shall be deemed modified to include the assignor and permitted assignee under such assignment and each of their respective employees, agents, partners, Affiliates, shareholders, officers, directors, members, managers, successors and assigns.

27. HAZARDOUS MATERIALS

27.1. **Use by Contractor.**

Contractor shall not and shall not permit any of its Subcontractors, directly or indirectly, to permit the manufacture, storage, transmission or presence of any Hazardous Materials on the Site, and Contractor shall not and shall not permit any of its Subcontractors to release, discharge or otherwise dispose of any Hazardous Materials on the Site, in each case, except in accordance with Applicable Law; provided, however, that

Contractor or its Subcontractors may bring onto the Site such Hazardous Materials as are necessary to perform the Work ("**Contractor Hazardous Materials**") so long as the same is done in compliance with Applicable Laws. Contractor shall remain responsible and strictly liable for all such Contractor Hazardous Materials brought on to or generated at the Site, unless such release or generation is caused by Owner, any Person for which Owner is responsible, or any third party including Owner's Separate Contractors (each an "Owner Party" and together, the "Owner Parties"), including the management, transportation, storage, labeling, treatment and disposal of all such Contractor Hazardous Materials. Contractor shall notify Owner prior to bringing any Contractor Hazardous Materials onto the Site and shall provide Owner, on Site, the following information with respect to any Contractor Hazardous Materials: (a) material safety data sheet; (b) quantity (volume/mass); (c) length of time on the Site; (d) container type; and (e) disposal location if disposed or otherwise managed. Contractor shall require all Subcontractors to provide the information required under this Section 27.1 to Owner before bringing any Contractor Hazardous Materials to the Site. Contractor shall exclude the use of lead paint and minimize the use of acetone and chlorinated solvents and similar substances at the Site and shall require all Subcontractors to do likewise.

27.2. **Remediation by Contractor.**

At Contractor's sole cost and expense, Contractor shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site in connection with the release, discharge or presence of Contractor Hazardous Materials unless such release or generation is caused by Owner or any Person for which Owner is responsible, or any third party including Owner's Separate Contractors. Contractor shall promptly comply with all lawful orders and directives of all Governmental Authorities regarding Applicable Laws relating to the use, transportation, storage, handling, presence or release by Contractor, any Subcontractor or any Person acting on its or their behalf or under its or their control of any Contractor Hazardous Materials, except to the extent any such orders or directives are being contested in good faith by appropriate proceedings in connection with the Work. For the avoidance of doubt, Contractor shall have no obligation to transport, store, remediate or otherwise handle any Pre-Existing Contamination or Hazardous Materials brought onto the Site by an Owner Party. Disposal or remediation of any Pre-Existing Hazardous Materials or Hazardous Materials brought on to the Site by an Owner Party and discovered during the course of construction is not included in the Contract Price and Contractor shall be entitled to cost and schedule relief, via Change in Work, to the extent the existence or removal of any such Pre-Existing Hazardous Materials or Hazardous Materials delays or otherwise increases the cost or time of Contractor's performance of the Work. Contractor will promptly notify Owner if any such Pre-Existing Hazardous Materials or Hazardous Materials brought onto the Site by an Owner Party are discovered in the course of the Work. All costs associated with removal and proper disposal of Pre-Existing Hazardous Materials or Hazardous Materials brought onto the Site by an Owner Party will be the responsibility of Owner and Contractor shall have no obligations with respect to such conditions.

27.3. **Notice of Hazardous Materials.**

(a) If Contractor discovers, encounters or is notified of the existence of any contaminated materials or Hazardous Materials at the Site, Contractor shall promptly Notify Owner thereof and restrict access to the area containing such contaminated materials or Hazardous Materials;

(b) If Contractor discovers, encounters or is notified of any spill or release of any Hazardous Materials at the Site:

(i) if such Hazardous Materials are Contractor Hazardous Materials, Contractor shall promptly remove such Hazardous Materials from the Site and remediate the Site in accordance with all Applicable Laws and Applicable Permits (to the extent the Applicable Permits relate to the Work) in each case at Contractor's sole cost and expense, except where such materials were released or spilled by Owner, its Affiliates, or any third party including Owner's Separate Contractors; and

(ii) if such Hazardous Materials are Contractor Hazardous Materials, Contractor shall not be entitled to any extension of time or additional compensation hereunder for any delay

or costs incurred by Contractor as a result of the existence of such Contractor Hazardous Materials, except where such materials were released or spilled by Owner, its Affiliates, or any third party including Owner's Separate Contractors.

28. LIEN FILINGS AND CLAIMS

28.1. Project Liens.

To the extent Owner has timely paid and Contractor has received amounts due and owing to Contractor under this Agreement, Contractor shall at all times promptly pay for all materials, Equipment, services and labor used in the performance of the Work and shall maintain all Work, materials, Equipment, structures, premises, and other property free and clear from all liens, security interests, attachments and other encumbrances created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Supplier or Subcontractor, or other Person providing materials, Equipment, services or labor in the performance of the Work, including common law, contractual, statutory and constitutional mechanic's liens, materialman's liens and labor liens (each a "**Contractor Lien**"). Contractor shall promptly bond, pay or discharge and discharge of record, within twenty (20) days (or such additional time as the Parties agree may reasonably be required) of Contractor's receipt of written notice of a filing of any Contractor Lien. Contractor shall indemnify, defend and hold harmless Owner Indemnitees from and against any and all Losses asserted or awarded against or incurred by such Indemnitees arising out of, resulting from, or relating to, such Contractor Liens. Contractor shall provide Owner upon its written request with reasonable evidence (including executed Lien waivers in form acceptable to Owner) showing that all claims for materials, Equipment, labor, and Suppliers and Subcontractors have been paid in full, or will be paid in full, to the extent Contractor has received amounts due and owing to Contractor under this Agreement.

28.2. Contractor Failure to Remove Liens.

If Contractor does not act so as to remove, discharge, bond, cancel or otherwise satisfy a Contractor Lien against Owner Indemnitee(s), the Site, the Project or the improvements thereon within the stated twenty (20) day period (or such additional time as the Parties agree may reasonably be required), then Owner at its sole option may: (1) take by way of offset funds from the Agreement balance sufficient to satisfy the Contractor Lien and to pay all Owner Losses and costs incurred by reason thereof; (2) transfer the Contractor Lien to a bond, at Contractor's expense, including all Owner Losses and costs thereby incurred; or (c) Pay directly to the Contractor Lien claimant, from the Agreement balance, the amount reasonably necessary to cause the removal and discharge of the Contractor Lien, with all costs and attorneys' fees thereby incurred chargeable to Contractor. Contractor shall have the right to contest any such Contractor Lien.

28.3. Preliminary Notices.

Contractor shall provide Owner, within fifteen (15) days of receipt thereof, copies of all Preliminary Notices received from potential Contractor Lien claimants in accordance with the Preliminary Notice requirement under New Mexico law intended to preserve Contractor Lien rights in connection with the Project ("**Preliminary Notice**"). With respect to any such Preliminary Notice filed or received in connection with the Work, Owner shall be entitled to request and receive conditional Supplier/Subcontractor interim Waivers and Releases, and Supplier/Subcontractor Waivers and Releases Upon Final Payment, from any Supplier or Subcontractor filing or serving any such Preliminary Notice.

28.4. Request for Information.

If any mechanic or materialmen submits a request for information to Owner or Contractor, seeking to obtain information necessary to comply with the Preliminary Notice requirement under New Mexico law, Contractor shall, within five (5) days after such a request is made, provide the requesting mechanic or materialmen with the information required to be included in a Preliminary Notice, and simultaneously provide Owner with Contractor's reply.

29. NOTICES AND COMMUNICATIONS

29.1. **Requirements.**

Any Notice made pursuant to the terms and conditions of this Agreement shall be in writing and deemed effective as follows: (a) if delivered personally, upon delivery; (b) if sent by certified mail, return receipt requested, upon certified receipt; (c) if sent by a recognized overnight mail or courier service, with delivery receipt requested, upon receipt; or (d) if sent by email, upon confirmation in one of the accepted methods in parts (a), (b), (c) (d) of this Section 29.1. To be effective, Notice must be addressed to and sent to the following addresses or to any alternative address which a Party shall identify by means of Notice in accordance with this Agreement:

If to Contractor:	GRIDWORKS INC. 3900 Singer Blvd NE Albuquerque, NM 87109 Attn: General Counsel Email: legal@gridworks.com
If to Owner:	PUBLIC SERVICE COMPANY OF NEW MEXICO 2401 Aztec Rd. NE Albuquerque, NM 87107 Attention: Director of Strategic Energy Planning and Development
With a copy to:	PUBLIC SERVICE COMPANY OF NEW MEXICO 414 Silver Avenue SW Albuquerque, NM 87102 Attention: General Counsel

Nothing contained herein shall preclude the transmission by electronic communication (such as electronic mail) of any communication in the normal course of business and any such transmission may be distributed solely by and between Contractor's Project Manager and the Owner Representative.

29.2. **Representatives.**

Any technical or other communications pertaining to the Work shall be with the Parties' designated representative. Each Party shall Notify the other in writing of the name of such representatives. Contractor's Project Manager and the Owner Representative each shall have knowledge of the Work and be available at all reasonable times for consultation. Each Party's representative shall be authorized on behalf of such Party to administer this Agreement, agree upon procedures for coordinating the efforts of the Parties, and, when appropriate, to furnish information to or receive information from the other Party in matters concerning the Work.

30. LIMITATIONS OF LIABILITY AND REMEDIES

30.1. **Limitations on Damages.**

Except (a) for liquidated damages as expressly set forth in this Agreement, (b) to the extent a termination payment made pursuant to Article 20 constitutes consequential damages, (c) to the extent damages claimed by third parties (*i.e.*, persons which are not Affiliates of Owner or Contractor, respectively) for which Contractor or Owner has a duty to indemnify hereunder as expressly provided in Article 23 are shown to be

consequential in nature, and (d) to the extent that a Party has breached any of its obligations set forth in Article 24, notwithstanding anything else in this Agreement to the contrary, no Party (nor that Party's subcontractors) shall be liable to any other Party hereto for any loss, damage or other liability otherwise equivalent to or in the nature of any indirect, incidental, consequential, exemplary, punitive or special damages arising from performing or a failure to perform any obligation under this Agreement, whether such liability arises in contract (including breach, indemnity or warranty), tort (including fault, negligence or strict liability), or otherwise, including for any loss of actual or anticipated profits, loss of revenue, or loss of use or productivity of Equipment, the PV Power Plant or the Project, downtime costs or revenues or product loss by reason of shutdown or non-operation, increased expense of operation or maintenance of the Equipment or the Project, loss of opportunity, reputation, or goodwill, cost of purchased or replacement power, equipment or systems, increased expense of borrowing or financing and increased cost of capital, claims of customers for such damages, or any governmental fines, penalties or sanctions imposed.

30.2. **Limitations on Contractor's Liability.**

(a) Subject to clause (b) of this Section 30.2, Contractor's liability to Owner and/or Owner Indemnitees under this Agreement, whether such liability arises in contract, tort, warranty or otherwise, shall in no event be greater in the aggregate than an amount equal to one hundred percent (100%) of the Contract Price.

(b) Contractor's limit of liability set forth in Section 30.2(a) shall not apply to (i) Contractor's indemnification obligations under this Agreement with respect to any claim by a third-party (*i.e.*, a person not Affiliates of Owner or Contractor, respectively) for bodily injury, death and property damage; or (ii) any insured claim to the extent that such claim is covered by insurance proceeds actually received from the insurance required to be maintained under this Agreement.

(c) In no event shall Contractor's liability under this Agreement for Delay Liquidated Damages exceed in the aggregate an amount equal to ten percent (10%) of the Contract Price (the "**Delay LD Cap**").

(d) In no event shall Contractor's liability under this Agreement for Capacity Liquidated Damages exceed in the aggregate an amount equal to fifteen percent (15%) of the Contract Price (the "**Capacity LD Cap**").

(e) Unless otherwise agreed by Contractor in its sole and absolute discretion, in no event shall the aggregate amount of Delay Liquidated Damages plus Capacity Liquidated Damages exceed in the aggregate an amount equal to twenty percent (20%) of the Contract Price (the "**Aggregate LD Cap**").

30.3. **Limitation on Remedies.**

Except as otherwise provided herein, the rights and remedies of each Party as set forth in this Agreement shall be the exclusive rights or remedies of the Parties.

30.4. **Limitations on Owner's Liability.**

(a) Subject to clause (b) of this Section 30.4, Owner's liability to Contractor and/or Contractor Indemnitees under this Agreement, whether such liability arises in contract, tort, warranty or otherwise, shall in no event be greater in the aggregate than an amount equal to one hundred percent (100%) of the Contract Price.

(b) Owner's limit of liability set forth in Section 30.4(a) shall not apply to (i) Owner's indemnification obligations under this Agreement with respect to any third-party claim; (ii) to Owner's obligation to pay the Contract Price; or (iii) any insured claim to the extent that such claim is covered by insurance proceeds actually received from the insurance required to be maintained under this Agreement.

31. DISPUTES

31.1. Dispute Resolution.

Any dispute or matter in question between the Parties arising out of or related to this Agreement (a "**Dispute**") shall be resolved pursuant to the procedures set forth in this Article 31, including whether a particular question is the proper subject of arbitration.

31.1.1. Dispute Resolution. Initially, Owner and Contractor shall attempt to resolve any Dispute that may arise in connection with this Agreement. If they are unable to resolve the Dispute within twenty (20) days, either Party may, by Notice, refer the Dispute to the senior management of the Parties for resolution. As used in this Article 31, "senior management" means Senior Vice President or other executive officer with comparable management duties and authority. Senior management representatives shall confer or meet to discuss the Dispute within twenty (20) days of the Notice. If the senior management of the Parties is unable to resolve the Dispute within sixty (60) days of the initial Notice, the Dispute may be submitted to mediation upon the demand of either Party.

31.1.2. Arbitrable Disputes. If the Parties do not agree to mediate the Dispute or are unable to resolve the Dispute through mediation and the aggregate amount of the claim (including counterclaims) is One Hundred Thousand Dollars ($100,000) or less, then the Dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the then-prevailing Construction Industry Rules of the American Arbitration Association. A Party electing to submit a Dispute to arbitration shall give the other Party a timely demand for arbitration and shall file the demand and the requisite fee with the American Arbitration Association. Such demand for arbitration shall describe the nature of the Dispute and the amount in controversy. The Parties shall then jointly select an arbitrator in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association; or, if the Parties cannot agree, there shall be three selected pursuant to the applicable rules. Such arbitrator(s) shall be familiar with the construction and electric generation industries. The arbitration shall be held in Albuquerque, New Mexico. Discovery shall be by agreement of the Parties or as ordered by the arbitrator(s), provided that the Parties shall comply with the following minimum discovery requirements: at least one hundred twenty (120) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration, all Project documents in any way related to the Dispute, a list of witnesses and a summary of the matters as to which each witness is expected to testify. A reasonable number of depositions may be taken. The arbitrator(s) shall decide the Dispute in strict accordance with the Agreement documents and by providing a reasoned award within thirty (30) days of the conclusion of the hearings. The award entered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof. All costs of mediation and arbitration (including the fees of the mediator and arbitrator(s)) shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel costs, witness fees, photocopying and similar costs. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico. Indemnity claims are not subject to mandatory arbitration.

31.1.3. Litigation of Larger Disputes. If the aggregate amount of the claims in dispute exceeds One Hundred Thousand Dollars ($100,000), then the Parties may agree in writing to submit the matter to binding arbitration; however, failing such a written agreement to arbitrate in accordance with the terms of Section 31.1.2 above, either Party may bring an action in the federal or state courts of New Mexico. This Article 31 shall have no application to claims, or requests for additional compensation or time, if those requests have not been properly preserved for submission to the dispute resolution procedures set forth herein. An arbitration demand shall include all related claims and Disputes then ripe for the dispute resolution procedures set forth herein.

31.1.4. Work Continuation. Contractor agrees that it can be fully compensated by money damages for any breach of this Agreement which may be committed by Owner (other than a breach of confidentiality, in respect of which Contractor shall, in addition to any monetary damages, be entitled to seek

specific performance, injunction or any other equitable remedy available to Contractor), and Contractor agrees that no default, act or omission of Owner shall entitle Contractor to terminate or rescind this Agreement, or to suspend, delay, stop or Abandon performance of the Work, except as expressly set forth in this Agreement. Subject to the foregoing, Contractor agrees that it will continue to diligently pursue the Work during the pendency of any Dispute, including any Dispute over payments claimed due and owing by Contractor, provided that Owner continues to timely make payments of undisputed amounts as required under this Agreement.

31.2. **Waiver of Jury Trial.**

EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, AND AGREES TO CAUSE EACH OF ITS RESPECTIVE AFFILIATES TO WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF OWNER OR CONTRACTOR.

32. MISCELLANEOUS

32.1. **Severability.**

The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. If any such provision of this Agreement is so declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Agreement as near as possible to its original intent and effect.

32.2. **Governing Law.**

This Agreement shall be governed by the internal laws of the State of New Mexico, excluding its conflict of laws provisions. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT HAVE BEEN FREELY, FAIRLY AND THOROUGHLY NEGOTIATED.

32.3. **No Oral Modification.**

No oral or written amendment or modification of this Agreement by any officer, agent, member, manager or employee of Contractor or Owner, either before or after execution of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized representative of the Party to be bound thereby.

32.4. **No Waiver.**

A Party's waiver of any Event of Default, breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Owner and Contractor in accordance with Section 32.3.

32.5. **Review and Approval.**

Notwithstanding Owner's review or Owner's approval of any items submitted to Owner for review or approval, neither Owner nor any of its representatives or agents reviewing such items, including the Owner's

Engineer, shall have any liability for, under or in connection with the items such Person reviews or approves, and Contractor shall remain responsible for the quality and performance of the Work. Owner's review or approval of any items, including the Contractor Deliverables, shall not constitute a waiver of any claim or right that Owner may then or thereafter have against Contractor. Any inspection comment, review or approval of any Contractor Deliverable shall be performed in Owner's sole discretion. The review or approval by Owner of any Subcontractor shall not constitute any approval of the Work undertaken by any such Person, cause Owner to have any responsibility for the actions, the Work, or payment of such Person or to be deemed to be in an employer-employee relationship with any such Subcontractor, or in any way relieve Contractor of its responsibilities and obligations under this Agreement.

32.6. **Third Party Beneficiaries.**

The provisions of this Agreement are intended for the sole benefit of Owner and Contractor and there are no third-party beneficiaries hereof (other than the Contractor Indemnitees and the Owner Indemnitees).

32.7. **Further Assurances.**

Owner and Contractor will each use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the reasonable request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance (including in connection with any financing involving the Project by either Party), or assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the cooperating Party, as the requesting Party may reasonably deem necessary or desirable to implement any provision of this Agreement provided, however, that the Contractor shall not be obligated without a Change in Work to accept any undertaking which will increase the Contractor's obligations under this Agreementand that if Owner requests that Contractor provide one or more legal opinions, each such opinion will be provided at Owner's cost.

32.8. **Record Retention.**

Contractor agrees to retain for a period of three (3) years from the Final Completion Date all material records relating to its performance of the Work for the Project or Contractor's warranty obligations herein related to the Project.

32.9. **Binding on Successors, Etc.**

Subject to Article 26, this Agreement shall be binding on the Parties hereto and on their respective successors, heirs and assigns.

32.10. **Merger of Prior Contracts.**

This Agreement supersedes any other agreements, whether written or oral, that may have been made or entered into between Owner and Contractor or by any office or officer of such Party relating to the Project, the PV Power Plant or the Work. This Agreement and the Exhibits and other attachments attached hereto constitute the entire agreement between the Parties with respect to the engineering, procurement and construction of the Project, and there are no other agreements or commitments with respect to each the Project except as set forth herein and therein.

32.11. **Counterparts.**

This Agreement may be executed in any number of counterparts, and any Party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. The Parties agree that the delivery of this Agreement may be effected by means of an exchange of facsimile or emailed signatures with original copies to follow by mail or courier service.

32.12. **Announcements; Publications**

32.12.1.Prior Approval.

Subject to Section 24.2, neither Party shall (either directly or indirectly), and neither Party shall permit any of its Affiliates to, issue or make any public release or announcement with respect to or concerning any matter the subject of, or contemplated by, this Agreement without reasonable prior consultation with the other Party and affording such other Party a reasonable opportunity to provide comments on such proposed release or announcement; provided, however, that, subject to the provisions of Section 32.12.2, nothing in this Agreement shall prevent either Party from independently making such public disclosure or filing as it determines in good faith is required by Applicable Law.

32.12.2.Marketing; Advertising.

Notwithstanding anything to the contrary in Section 32.12.1, except as may be restricted or prohibited by Applicable Law, Contractor or any of its Affiliates shall be permitted to show, by photograph or otherwise, in any marketing, advertising or other materials, the Project under construction or as completed (including any related Equipment), without first obtaining the prior consent of Owner. Owner and any Affiliate of Owner shall be permitted to videotape or otherwise record any of the Work, including the installation and/or construction work performed by Contractor hereunder, or show to any other Person any photographs (or similarly recorded images) of such construction or installation Work, without first obtaining the prior written consent of Contractor.

32.13. **Independent Contractor.**

Contractor is an independent contractor, and nothing contained herein shall be construed as constituting any relationship with Owner other than that of owner and independent contractor, except as expressly provided in this Agreement pursuant to which Owner appoints Contractor as Owner's agent, or as creating any relationship whatsoever between Owner and Contractor's employees. Neither Contractor nor any of its employees is or shall be deemed to be an employee of Owner.

32.14. **Audit.**

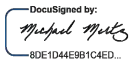
Contractor shall maintain, in accordance with generally accepted accounting principles consistently applied, records and books of account with respect to all Equipment incorporated into, together with all labor utilized in the performance of, the Work. With respect to any Change In Work performed by Contractor on a reimbursable cost or time and materials basis pursuant to an Owner's Directive, or any claim asserted or investigation commenced by the Taxation and Revenue Department of the State of New Mexico with respect to the Project, Owner, Owner's Engineer, the Owner Financing Parties, and their authorized representatives shall be entitled to inspect and audit such records and books of account of the Project related to such costs or claims, as applicable, during normal business hours and upon reasonable advance Notice during the course of the Work and for a period of three (3) years after Final Completion; provided, that the purpose of any such audit shall be only for verification of such costs and Contractor's compliance with and adherence to the provisions of this Agreement and all Applicable Laws; provided, further, that Contractor shall not be required to provide access to those of its costs covered by the fee, allowances, fixed rates, unit prices, lump sum amounts, or of costs which are expressed in terms of percentages of other costs, except to the extent required by a claim asserted or investigation commenced by the Taxation and Revenue Department of the State of New Mexico. Contractor shall retain all such records and books of account for a period of at least three (3) years after the Final Completion Date. Audit data shall not be released by the auditor to parties other than Contractor, Owner, Owner's Engineer, and their respective officers, directors, members, managers, employees, and agents in connection with any such audit, subject to the provisions of Article 24. If, as a result of any audit conducted pursuant to this Section 32.14, the results of such audit indicate that Contractor received more or less than the amount to which it was entitled under this Agreement, either Owner shall pay the additional amount owed to Contractor or Contractor shall refund any overpayment to Owner, as applicable, in either case within ten (10)

days of a written request therefor. Owner shall be responsible for all costs and expenses of such audit.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE(S) FOLLOW.)

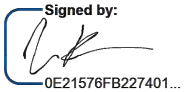
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: 

Name: Michael Mertz
Title: SVP PNM Operations

GRIDWORKS INC.

By: 

Name: Kevin Bassalleck
Title: President

EXHIBIT A-1

CONTRACTOR'S STATEMENT OF WORK

1. GENERAL

1.1. Definitions

In this Exhibit, terms that are capitalized herein but defined in Article 1 of the terms and conditions of this Agreement shall have the meanings set forth in Article 1. Section 1.5 of the terms and conditions of this Agreement shall apply to the extent that there is any conflict or inconsistency between a defined term set forth herein and any other defined term in this Agreement. Capitalized terms used in this Exhibit and not otherwise defined in this Agreement shall have the meanings generally ascribed to them in the commercial energy generation industry in the United States. Subject to the foregoing, the following terms and expressions used in this Exhibit shall have the following meanings:

A. "DC" or "dc" means direct current.

B. "SCADA" means the data acquisition system specified in Section 2.9.

C. "ft" means feet.

D. "Hz" means Hertz.

E. "kV" means kilovolts.

F. "kW" means a measure of instantaneous power as measure in kilowatts AC.

G. "kWh" means kilowatt-hours (AC).

H. "LGIA" means most recent Large Generator Interconnection Agreement per OASIS

I. "NOC" means the network operations center.

J. "No Fly Zone" means an area designated by Owner in writing in which Contractor is prohibited from placing equipment or routing cable through, either above or below grade.

K. "OASIS" means PNM's Transmission and Interconnection website located at https://www.oasis.oati.com/PNM/.

L. "POI" means the point of interconnection which defines the location of the physical electrical interconnection to the Transmission Provider.

M. "PCS" means the power conversion station for the Plant which consists of the static power inverters, inverter step up transformers, cabling and grounding systems.

N. "PPC" means the plant-level power controller specified in Section 2.11.

O. "Plant" means the PV Power Plant.

P. "Primary voltage" means low voltage of the inverter step-up transformer.

Q. "SCC" means the site control center which shall be the central data storage equipment for the SCADA.

R. "SIS" means most recent System Impact Study per OASIS

S. "Secondary voltage" means medium voltage of the inverter step-up transformer

T. "Tariff" means the Transmission Provider's tariff through which open access transmission service and interconnection service are offered, as filed with the Federal Energy Regulatory Commission, and as amended or supplemented from time to time, or

any successor tariff.

U. "Transmission Provider" means the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff.

1.2. Contractor Scope of Work Overview

A. All designs, equipment and work shall be performed in accordance with sound and accepted industry standards and practices, and in accordance with all applicable laws. Contactor's employees and subcontractors assigned to this project shall have all necessary certifications and licenses and be fully qualified to perform their respective tasks. Contractor agrees and warrants that all materials, supplies, equipment and/or services provided in connection with this project meet the safety standards established and promulgated under the Federal Occupational Safety and Health Act and other laws relevant to completing this project in a safe manor.

B. Contractor shall furnish a ground mounted Plant to Owner at or above the specified Minimum Gross Capacity for the Plant.

C. Contractor shall provide a topographical Site survey of the existing Site Conditions. Contour intervals shall be in one foot increments.

D. Contractor shall conduct a geotechnical study suitable for the Project level design work including bearing capacities, soil characteristics and infiltration requirements. This study shall also consist of in situ load pile testing.

E. Contractor shall design and construct the Plant in accordance with this Statement of Work. This Statement of Work shall require Contractor to:

i. Specify and furnish the Equipment which shall include, without limitation, the PV Modules, structural support systems, module string DC wiring harnesses, DC combiner boxes or load break disconnects, inverters, medium voltage step-up transformers, PCS, SCADA and ancillary hardware and software required to connect and operate listed Equipment. Contractor shall provide a communications protocol that identifies all hardware, software and other Equipment necessary to render the Plant capable of remote monitoring by Owner; SCADA data will be exchanged between the Owner and Contractor using the recommended protocol and communication network as referred in Appendix A to LGIA between the Plant SCADA ICS and the owner's RTU (remote terminal unit). Optionally, data may be exchanged using an Ethernet connection between the SCADA ICS and the Owner's RTU. The data exchange protocol will be DNP3 (or DNP3/IP) and system shall accommodate two serial connections at a minimum. Data to be exchanged will include mutually agreed upon meteorological data, metering, alarms, and device status. Provide outside lighting at the BESS yard and within the Interconnection Substation;

ii. Undertake Plant design engineering and drawing packages for construction permitting, installation and "as-built" documentation, which will be made available to Owner or the Owner's Engineer for review and comment, provided that Owner shall conduct such review and provide comments within 10 days, if any, and provided further, that under no circumstances shall Contractor be required to delay completion of the Work in order to accommodate Owner's review and comment;

iii. Interconnect the Project to the Point of Interconnection pursuant to the LGIA. Contractor shall provide a single station service feed from the 345 kV bus and provision for redundant station service feed supplied by the local utility.

iv. Contractor will be responsible for engineering services, design specifications, installation, material procurement, construction, testing and commissioning services for the 34.5/345 kV step up Interconnection Substation and a 345 kV transmission line from the Interconnection Substation to the Point of Interconnection. The substation will be designed as a single 345 kV breaker to a 345/34.5 kV transformer to four 34.5 kV collector circuits and control enclosure housing the protection and control, and communication equipment.

v. Perform Plant construction including Site, Interconnection Substation, applicable transmission lines and equipment, perimeter fencing, structural, electrical, mechanical and monitoring/control systems, which will be made available to Owner or the Owner's Engineer for review and comment, provided that the Owner shall conduct such review and provide comments, if any, as promptly as possible but no more than 15 Business Days. If no comments are received within 15 Business Days, Contractor shall assume Owner has no comments and will proceed forward.

vi. Undertake Plant and construction management, including quality assurance/quality control, Site safety, Site material control and management of all Subcontractors;

vii. Perform Plant commissioning and testing in accordance with Exhibits H- 1 and H-2 and V;

viii. Complete Plant turnover including Owner's Operating Personnel training and Plant operations, QA/QC and maintenance documentation;

ix. Identify document transmittal procedures and maintain current transmittal status throughout the performance of the Work for Owner's and Contractor's review and access;

x. Provide an organization chart which shall include names and contact information for critical personnel; and

xi. Develop and implement a Project document transmittal process to ensure all Project material, design and contract information is uniquely identified throughout the Project,

in each case subject to and in accordance with the provisions of the Agreement.

F. Contractor shall use Commercially Reasonable Efforts to support Owner in obtaining and complying with the LGIA for the Plant from the Transmission Provider.

G. Contractor shall use Commercially Reasonable Efforts to support Owner in complying with the terms of the Power Purchase Agreement and Energy Storage Agreement.

H. Temporary Facilities & Utilities for the Plant

i. Contractor shall also provide for the Site a plot plan identifying access, egress, laydown and storage areas, and turn-around ratios required for deliveries.

ii. Contractor shall be responsible for establishing and maintaining all restroom, lunchroom, and other office and meeting areas for the duration of the construction and commissioning portion of the Plant.

iii. Contractor shall provide temporary sanitary facilities consisting of above ground Porta-John type. One such unit shall be dedicated for Owner's use.

iv. Contractor shall provide a construction office space complete with temporary electric and Wi-Fi communications, such construction office to include sufficient workspace for Owner's Representative.

v. Contractor shall maintain on-Site dumpsters and personnel on the Site to maintain a clean and rubbish free work-site (on a daily basis).

vi. Contractor shall install temporary electrical services for its use during construction and commissioning. Consumption costs shall be paid by Contractor.

vii. Contractor shall obtain water for its use during construction and commissioning from a Contractor-supplied source. Consumption costs shall be paid by Contractor as a Contractor-Provided Facility and Service. Contractor to provide water consumption report to Owner on a monthly basis.

I. Contractor shall be responsible for implementing and adhering to storm water pollution prevention plan during construction and commissioning, including implementation of dust suppression and erosion control measures.

1.3. General Design of the Plant. In addition to all other design requirements set forth in this Agreement, Contractor shall design the Plant so that 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 Automatic Generation Control (AGC), which means an energy management system equipment that automatically adjusts the generation quantity of the Plant and capable of controlling all inverters, including communication circuits to communicate Project operating information, on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications;

C. supply energy with minimal harmonic distortion in compliance with the requirements of the interconnection agreement and Industry Standards;

D. be capable of receiving Charging Energy from the grid and delivering Discharge Energy to the grid, each at the frequency specified by the Transmission Provider;

E. meet voltage and reactive/active power control performance for a Category B system as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery;

F. meet the normal and abnormal performance category as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery, which shall be Category II minimum;

G. meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 at the Point of Delivery;

H. be capable of both full load and idle operation over an ambient temperature range of -20°F to 104°F with the full range of relative humidity;

I. be capable of being remotely started and stopped;

J. be capable of immediate disconnection remotely; and

K. Within one-hundred eighty (180) Days following the Execution Date, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Project's SCADA or equivalent systems with Transmission Provider's system. The Project's SCADA interface with Transmission Provider shall be a DNP3 standards-based control protocol for Transmission Provider -directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i)

Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Project shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Project shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements.

1.4. Site and Environmental Criteria

A. All design of the Plant shall be based upon the requirements set forth in the below tables and the other requirements of this Agreement:

Table A-1-1
Existing Site Design Conditions

Project Location	The Sunbelt Solar Energy Center is sited on located in San Juan County, New Mexico.
Minimum/Maximum Dry Bulb Temperature	[1.4]°F / [93.2]°F ASHRAE 2021, 50 year *To be provided by Contractor within fifteen (15) days of Notice to Proceed.*
Maximum Elevation	5,420 ft. above mean sea level *To be provided by Contractor within fifteen (15) days of Notice to Proceed.*
Environmental Conditions	As set forth in Exhibit L (*Site Assumptions*)
Site Road Access	[●]*To be provided by Contractor within fifteen (15) days of Notice to Proceed.*
Seismic Criteria	Site Class D S_{DS}=TBD, SD1=TBD
Wind Design	90 MPH (3 sec gust), Exposure C, Importance Factor 1.0 (to be confirmed)
Snow Load	5 PSF (to be confirmed)
Occupancy Class	II
Maximum storm water velocity and depth	ft/second (velocity) & ft (depth) [to be supplied] *To be provided by Contractor in Hydrology Report*
Rainfall	*To be provided by Contractor in Hydrology Report*
Average Min/ Max Annual Rainfall	in./ in. [to be supplied] *To be provided by Contractor in Hydrology Report*

Maximum 24 hr Rainfall	in. [to be supplied] *To be provided by Contractor in Hydrology Report*
Design Maximum Rainfall Rate	year / hour storm *To be provided by Contractor in Hydrology Report*
Wetlands	None
Floodplains	None
Existing Site/ Grade	As set forth in Exhibit L (*Site Assumptions*)
Subsurface Soil Conditions	As set forth in Exhibit L (*Site Assumptions*)

1.5. Design Criteria

A. Design life of the Plant shall be 25 years.

B. Minimum Gross Capacity of the Plant shall be as specified in the first recital of this Agreement.

C. The Plant shall be oriented physically to optimize annual energy harvest.

1.6. Design Conditions

A. The Plant shall be designed for fully automatic, unmanned operation.

B. Plant electrical design generally for the Plant shall be 2020 NEC and/or NESC compliant. However, various components of such Plant may not carry a UL label listing including:

i. DC fuses, switches and/or circuit breakers

ii. Overhead distribution and transmission systems: burial depth of DC conductors is often less than those required by the NEC.

It is assumed that Owner shall claim the utility exemption under the NEC code and therefore, not be required to file for local electrical subcode approvals/permits.

1.7. Operating Criteria

A. DC grid voltage: 1500 volts DC or greater, grounded or floating, ungrounded

B. AC grid voltage: 115 kV (115,000 volts), 60HZ

C. DC & AC electrical systems under 1500 V shall be radially configured with no redundancy. Medium voltage AC systems shall be loop configured with zero redundancy.

D. Convenience power: 120 V_{AC}

E. Instrumentation voltage: 24 volts DC or 125 V_{DC}.

F. Communications network: Owner will provide internet connection via direct buried fiber optic ring or other appropriate and adequate means to the Interconnection Substation.

1.8. Standards

Contractor shall design and construct the Plant in accordance with the following standards,

as applicable, as well as Applicable Laws and Applicable Permits:

ACI - American Concrete Institute

AISC - American Institute of Steel Construction

AISI – American Iron and Steel Institute

ANSI - American National Standards Institute

ASTM - American Society for Testing and Materials

IBC - International Building Code

ICEA - Insulated Cable Engineers Association

IEC - International Electrotechnical Commission

IEEE - Institute of Electrical and Electronics Engineers

ISA – Instrumentation Society of America

NEC - National Electrical Code

NEMA - National Electrical Manufacturers Association

NFPA – National Fire Protection Association

NESC - National Electrical Safety Code
NETA - National Electrical Testing Association

OSHA - Occupational Safety and Health Act

TUV SUD America

UL – Underwriter's Laboratories for all AC equipment (except those listed in paragraph 1.6(B) of this Exhibit above) when such standards exist

In the case where standards have conflicting requirements, Contractor may, subject to Owner's approval, select any of the foregoing standards.

2. PLANT HARDWARE

2.1. General

Contractor shall provide Equipment for the Plant as described herein. With respect to the Plant, Contractor reserves the right to modify Equipment specified herein to address specific Site Conditions which may be discovered during design or to take benefit of improved materials or technological advancements, which will be made available to Owner for review and comment, provided that Owner shall conduct such review and provide comments, if any, as promptly as reasonably practicable and provided further, that under no circumstances shall Contractor be required to delay completion of the Work in order to accommodate Owner's review and comment as long such modification does not violate this agreement or the interconnection agreement.

2.2. PV Modules

A. 2020 Tier 1 Bifacial modules approved by Owner.

B. Glass laminate with Anti-Reflective Coating

C. Quick connect electrical terminations

D. Certified for reliability and safety according to IEC 61215 and IEC 61730

E. Manufacturing certified to ISO9001:2008 and ISO 9001 quality and ISO14001:2004 environmental standards.

Module Support Structure for the Plant

A. Foundation shall be driven galvanized or equivalent corrosion-resistant steel members, mini-cast augured piles or equivalent.

B. Module support sub-structure frame may be corrosion resistant steel or aluminum, which will be made available to Owner for review and comment, provided that Owner shall conduct such review and provide comments, if any, as promptly as reasonably practicable and provided further, that under no circumstances shall Contractor be required to delay completion of the Work in order to accommodate Owner's review and comment.

C. Mounting hardware shall be corrosion resistant.

2.3. As set forth in Exhibit L, it is assumed that no cathodic protection will be required. Any evaluation by Contractor of the soil as to the need for cathodic protection, and any cathodic protection requirements determined from the geotechnical survey shall be provided by Contractor.

2.4. DC Wiring

A. DC wiring consisting of 2 kV rated single copper or aluminum conductor, type XLPE (cross-linked polyethylene) insulation. Harnesses shall be provided with connectors.

B. Connectors shall be of the male and female variety, shall be weatherproof, and shall be provided with means to prevent disconnection by bare hand.

2.5. Site Assumptions. Owner shall be responsible for all Site preparation in relation to the Site Assumptions set forth in Exhibit L.

2.6. PV DC Fused Combiner Boxes or Load Break Disconnect Boxes

A. Enclosure shall be rated minimum NEMA 3R.

B. Factory assembled back panel complete with $1500V_{DC}$ finger safe fuse holders, main switch, bussing, surge suppressor, labeling and signage.

C. All enclosures shall have provisions for pad locking.

D. Enclosures shall be mounted to driven posts.

E. Completed assemblies might not carry a UL listing.

2.7. Power Conversion Stations (PCS)

A. The PCS shall consist of inverter(s), inverter step up transformer(s), LVAC coupling, grounding system, and an inverter shelter (if needed).

B. Inverter(s)

i. Inverter(s) shall be: line commutated static type, employing solid state high speed switching elements, DC and AC filters, protective features, and fully automatic in

operation.

ii. Inverters shall be fully rated when supplied with 40°C air temperature, at the inlet of its internal cooling circuit. Inverter shall be capable of dynamic VAR regulation in accordance with WECC requirements and those of the Small Generator Interconnect Agreement. Current harmonics: <3% THD.

iii. Inverter efficiency shall not be less than 97% as defined by California Energy Commission

iv. Completed assemblies shall be UL 1741 listed.

v. Completed assemblies shall be UL listed and shall be designed to IEEE-519 standards.

C. Inverter Shelter (If applicable due to product and/or site specific applications)

i. PCS may be prefabricated metal, pre-cast concrete enclosures where no enclosure is used, inverters and auxiliary equipment shall be NEMA 3R rated.

D. The PCS shall be provided with supply and/or exhaust ventilation system to facilitate self-cooling of the inverter. Inverter protective features may be activated for brief periods of time if the inverter inlet air temperature exceeds 50°C. (only if a PCS shelter is used.)

i. Inverter(s) size and type shall be determined during detailed design and comply with site interconnection agreement.

ii. Inverter(s) shall employ a control algorithm to maximize energy harvest through maximum power point tracking.

iii. Inverter self-cooling may be via air or liquid refrigerant, or a combination of these.

iv. Inverter protective features shall include the following:

a. overload

b. short circuit

c. high/low AC voltage

d. loss/restoration of AC voltage

e. high/low grid frequency

f. high DC bus voltage

g. internal faults

h. high internal temperature

i. automatic thermal protective control system capable of limiting its power output in the event environmental conditions (e.g., inlet air temperature) are inadequate to remove self-generated heat.

v. PCS layout shall include adequate spacing to accommodate inverter maintenance activities.

vi. PCS shall have adequate task lighting to perform all maintenance activities.

vii. For purposes of determining local fire protection and HVAC requirements, PCS design is considered unoccupied.

viii. Smoke/heat detector(s) (wired into SCADA) shall be provided in each PCS (only if

a PCS shelter is used). No other fire detection and protection devices or systems will be provided.

ix. PCS shall be provided with a 120/208V load center with transformer sized to provide auxiliary power to inverter fans, PCS lighting, and exhaust fans. (PCS will include utility power system but will not include shelter fans or lighting if no shelter is used.)

x. PCS enclosure shall be provided with ventilation equipment controls designed to limit the temperature differential between outside and inside to approximately 5ºC, under full load operation (only if a PCS shelter is used), when the ambient temperature is greater than 40ºC.

xi. Enclosure shall be provided with air filtration to a minimum of MERV 8 (only if a PCS shelter is used).

2.8. Inverter Step-up Transformers

A. Inverter step-up transformers shall be compartmental pad-mount design, dead front, loop feed conforming to ANSI C57.12.00

B. Transformer winding configuration shall be matched to the inverter requirements and shall be KNAN type cooling.

C. Transformer sizing shall be determined during detailed design, and comply with site interconnection agreement.

D. Primary voltage (low) shall be: matched to selected inverter during detailed design. Winding configuration(s) for transformer primary (low) shall be Wye.

E. Secondary voltage (medium): 34.5kV Delta

F. Windings shall be copper or aluminum.

G. If necessary, fully rated no load tap changer with high voltage taps: (2) 2.5% above and (2) 2.5% below nominal position will be provided

H. Current limiting and overload oil immersed fuses

I. Biodegradable insulating fluid

J. Top powder coat of ANSI 70 light grey, Pueblo Tan or white

K. Oil level, pressure/vacuum and oil temperature gauges will be furnished with alarm contacts and shall be monitored by the SCADA.

L. Oil drain valve for dissolved gas analysis sampling provisions accessible outside on the tank

M. Transformer shall be mounted on a skid or alternate owner-approved foundation system.

N. Completed assemblies must carry UL, UL-C, or CSA certification

O. Transformer shall be furnished with an under oil, load break, on/off, high voltage side switch.

2.9. SCADA

A. SCADA is composed of hardware and software, Plant servers, field instrumentation, meteorological stations, and communications devices designed for local monitoring and historical trending, and operation of the Plant.

B. Upon Owner's final approval of a design for the SCADA, Contractor shall supply, install, and commission the SCADA hardware (listed in the above paragraph) at the Site.

C. SCADA shall display data in real time and log performance data at regular intervals from the Plant.

D. Performance data and screens shall be made available to Owner through one of the following options:

i. Contractor will host a website with a portal, providing up-to-the-minute performance data. Website will show current day, previous day, week, month and yearly data. Website will also show performance trending, alarm and fault events, and diagnostic tools for optimizing performance;

ii. Contractor will offer integration services to add the SCADA components to Owner's existing data infrastructure. Owner will then have access to monitor and collect data along with reporting and analysis;

iii. Communications between the instrumentation and the controllers in the PCS shall be via Modbus. Communications between the PCS and the SCC shall be transmitted via TCP/IP, typically on a fiber layer; communications over that network shall be transmitted via Modbus, TCP, Ethernet IP or other standard method of communication.

iv. Contractor shall program the software for the Plant, Wonderware platform (or its equivalent) at Owner's discretion

v. Contractor shall install the selected software on an operator workstation computer, and shall grant Owner a SCADA user's license for local viewing of data generated by SCADA. The operator workstation computer shall be located at the SCC building. Title to the operator workstation and the user's license shall be transferred to Owner. Owner will be responsible for purchasing additional software licenses and maintenance services associated with Owner's use of the SCADA system.

E. Industrial Control Systems (the "**ICS**")

i. ICS shall be employed as part of Contractor's SCADA for the purpose of data aggregation, protocol converting, and alarming.

ii. The ICS shall function as the input/output point for device signals.

F. SCC

i. The SCC will act as the central point for the SCADA. The SCC will also function as the primary interface for local operators and technicians to troubleshoot and control the system.

ii. The SCC shall also function as the communications center for the Site.

iii. The SCC shall also contain the Owner-supplied switch/router for the point of connection to the T1 line used for communication.

G. Owner shall supply Contractor with electronic access to be used to transfer operational data to Contractor's data storage warehouse, for Contractor's use. The SCC may be housed within the Owner's existing facilities. Exact location shall be determined at time of detailed design.

H. Meteorological Stations (the "**Met Stations**").

i. A Met Station shall consist of instruments to measure the meteorological parameters listed below.

a. Irradiance (horizontal, front plane of array and rear plane of array)

b. Albedo

c. Outside air temperature

d. Rainfall amount

e. Wind speed

f. Wind direction

g. Relative humidity

ii. The number of Met Stations and soiling stations shall be specified in Exhibit H-2.

iii. Exact location of the Met Stations will be determined during detailed design phase.

iv. The Met Stations shall have a battery backup and be capable of full data logging.

v. The Met Stations shall have dedicated power feeds.

I. Test Instrumentation

i. The number of reference PV Modules and module surface temperature clusters shall be specified in Exhibit H-2.

ii. The location of reference PV Module and module surface temperature clusters shall be specified in final design.

J. Typical points monitored by the SCADA system include the following and those listed in Exhibit R:

i. Meteorological, MST (Module Surface Temp) and soiling station parameters

ii. Tracker

a. Motor status

b. Array angle

iii. Power Conversion Station (PCS) points

a. Inverter shelter points (if applicable)

(i.) Shelter environmental conditions (if applicable)

(ii.) Shelter door position switch (if applicable)

(iii.) Inverter performance points

(iv.) To include real time AC and DC electrical characteristics, including power, energy generated, inverter status and diagnostics, and all data available from inverter system.

(v.) DC circuit monitoring at the inverter input

iv. PV module points

a. PV module surface temperature

v. PV module subarray DC current points

a. PV module DC current transmitters

vi. Transformer points

a. transformer oil temperature (digital)

b. transformer pressure/vacuum (digital)

c. transformer oil level (digital)

vii. AC Revenue Meter Points

a. To include real time AC electrical characteristics, including power and energy generated via a single meter for the Plant from which Owner can access data for the Plant. The meter, which shall be a solid state, high precision, digital display meter of ANSI 0.1 accuracy class or better, shall be installed at the point of delivery to the extent required under the applicable interconnection agreement.

2.10. PPC

A. PPC consists of the hardware, software and communications interfaces required to measure, report and affect changes to the total plant power output and frequency. To accomplish this, it needs to communicate with Plant sensors, meters, inverters and SCADA, as well as interfacing with SCADA and both local and remote Plant control panels. PPC design shall follow architectural guidance of the "Grid-Friendly" Utility-Scale PV Plant white paper, Gridintegration_WP_NA_13AUG, and shall provide 24/7 remote regulation of real and reactive power output form the PV Power Plant.

B. Upon Owner's final approval of a design for the PPC, Contractor shall supply, install, and commission the PPC hardware (listed in the above paragraph) at the Site.

C. PPC shall provide the following plant-level control functions:

i. Dynamic voltage and/or power factor regulation, and closed loop VAR control (power factor OR engineering unit limited) of the solar power plant at the point of interconnection,

ii. Real power output curtailment to an operator-specified limit when required

iii. Ramp-rate controls to enforce specified ramp-rate limits, to the extent possible,

iv. Frequency control (governor-type response) to lower plant output during over-frequency situations or (if possible) increase plant output during under-frequency situations,

v. Start-up and shutdown control.

vi. Selectable 'local/remote' operations mode for control via local HMI or via remote SCADA interface

2.11. Interconnection Substation (subject to changes in component quantities at 30% design)

Contractor shall design, procure, and construct a new 345/34.5 kV Interconnection Substation for 100 MW of solar generation and 30 MW of BESS capacity. The substation will be designed based on a radial transmission connection and have one 345 kV breakers connected to one 345/34.5 kV transformer and 34.5 kV collector circuits with a control enclosure, protection and control, and communication equipment. This shall generally

include the following:

A. Foundations – drilled pier/direct embed, slab, with oil containment where necessary
   i. Two (2) static mast foundations
   ii. One (1) H-frame deadend foundation (2 piers each)
   iii. One (1) power transformer foundation with containment pit
   iv. Three (3) 345 kV CCVT support foundations
   v. One (1) 345 kV SF6 gas circuit breaker pad foundation
   vi. Five (5) 34.5 kV disconnect switch foundations
   vii. One lot of 34.5 kV main bus structure foundations
   viii. Four (4) 34.5 kV breaker pad foundations
   ix. Four (4) 34.5 kV termination structure foundations
   x. One (1) control enclosure foundation

B. Steel structures
   i. Two (2) static mast structure
   ii. One (1) H-frame deadend structure with provisions for a 345 kV disconnect switch.
   iii. Three (3) CCVT support stands
   iv. Five (5) three-phase 34.5 kV disconnect switch support stands
   v. One lot of 34.5 kV main bus support structures
   vi. Four (4) 34.5 kV underground cable riser/ termination support stands

C. Conduit and Raceway system
   i. Below Grade
      a. One (1) lot below grade manhole and PVC conduit for control cable distribution
      b. One (1) lot control cable installation
      c. One (1) lot below grade ground grid (4/0 bare copper)
      d. One (1) lot below grade ground connections (exothermic)
      e. One (1) lot below grade 34.5 kV feeder PVC/fiberglass raceways/sweeps for solar feeder cables (conduits extended to ~10' beyond station perimeter fence)
   ii. Above Grade
      a. One (1) lot above grade conduit systems (PVC, rigid, aluminum as required)
      b. One (1) lot control cable terminations
      c. One (1) lot above grade grounding conductor and equipment connections
      d. One (1) lot aluminum bus, stranded jumpers, and insulators

D. Grounding study and ground grid design

E. Lightning protection study and design

F. Substation general arrangement and supporting details

G. Bus layout and design

H. Procure and install all major equipment

i. 1- 345-34.5 kV, 116 MVA Transformers with DETC (minimum +/- 2.5% pu). Transformer will be procured by Contractor and will be delivered, dressed out, and tested by the transformer manufacturer. NOTE: As described in section 5.1, Transformer may be provided by Owner with appropriate notice to Contractor.

ii. 1 – 345 kV 1,200 A circuit breaker

iii. 4 – 34.5 kV, 1,200 A, circuit breakers

iv. 1 – 345 kV, 1,200 A, gang operated, center break, vee type disconnect switch

v. 3 – 345 kV, CCVT's

vi. 6 – 98 kV MCOV Surge arresters (3 on deadend, 3 on transformer)

vii. 9 – 34.5 kV, 1,200 A, gang operated disconnect switches (1 load break, 8 non-load break)

viii. 3 – 34.5 kV PT's for revenue metering and ground detection.

ix. 15 – 24.4 kV MCOV surge arresters (12 on cable riser structures, 3 on transformer)

x. 1 – 34.5/120-240 V, 50 kVA, Station-service transformer (size to be determined pending load study, 25 kVA minimum)

xi. 34.5 kV grounding transformer – Contractor will size and select appropriate equipment for inclusion in the station protection schemes/buswork/yard layout

xii. 1 – Prefabricated frameless metal or precast concrete control building to include:

a. Insulation

b. Ceiling

c. Epoxy finished/painted concrete floor

d. Two entrances/exits with panic hardware

e. HVAC system with heating and cooling suitable for building loads/location

f. 120/240V AC Station service panels & associated distribution facilities

g. Interior and exterior lighting

h. Exit lights

i. Building interior/exterior outlets

j. Smoke detector

k. Alarm termination enclosure

l. Eye wash for 15 minute flush with suitable fluid

m. Yard lighting panel/controls

n. Cable tray (Separate tray system for Communications)

o. Protection, control , metering panels and associated fusing, terminal blocks, shorting blocks

p. 125 V_{DC} Lead-acid battery system including rack, battery vent, containment pan & electrolyte absorbent bags

q. 125 V_{DC} power panel and power distribution facilities

r. Building stoops with steps (if necessary) to grade

s. Table for print review

I. Yard Lighting – shall comply with the dark sky requirements in accordance with IDA (International Dark Sky Association) standards (https://www.darksky.org/about/).

J. Chain link fence and gates (Grounded to station grounding grid; 2 drive gates; 1 personnel gate)

K. Final Grading – station area and immediate access roads to station only

L. Crushed rock – for station area surfacing; depth dependent upon grounding study results, 4" minimum)

M. Protection and controls (equipment types and quantities to be determined pending design and Transmission Operator/Owner requirements)

i. Six (6) freestanding, rear access only style relay panels including:

a. One (1) transformer protection/345 kV breaker control panel with dual transformer protection relays (SEL-487E or similar) and one protection/ monitoring/control system (SEL-351 or similar)

b. One (1) 345 kV Utility line protection panel with dual line differential protection, automation, and control systems (SEL-411L or similar)

c. Two (2) 34.5 kV dual feeder protection and metering panel with protection/ monitoring/control system (SEL-351 or similar) and a power quality and revenue meter (SEL-735 or similar)

d. One (1) communications panel with RTAC

e. One (1) PMU panel with a rack-mount computer (SEL-3355 or similar), RTAC (SEL-2241 or similar), and Ethernet switch (SEL-2730 or similar)

N. Relay settings

O. Testing and commissioning

P. Deliverables

i. Calculations/Settings/Studies

a. Foundation calculations

b. Ground grid calculations

c. Lightning/Shielding calculations

d. Bus/structural support calculations

e. Battery calculations

f. Short-circuit calculations

g. Arc flash hazard analysis

h. Relay settings and protective device coordination

i. ETAP model of the substation

ii. Drawings

a. All required drawings to be provided in both PDF and AutoCAD format

b. Final record drawings provided at project completion

iii. Design Reviews shall occur at the 30% complete, 60% complete, and 90% complete stages and address drawings, bills of material and calculations/studies. Afterwards, comments or additional items of clarification will be addressed. Contractor shall present final designs and bills of material to Owner for approval prior to construction.

2.12. Substation Automation

Contractor will provide and program a Real-Time Automation Controller (RTAC) (SEL-3530 or similar) for the new 345/34.5 kV Interconnection Substation located in San Juan County, NM

Contractor will program the RTAC data concentrator to gather all data required from the Intelligent Electronic Devices (IEDs) in the control house. Contractor will utilize RJ45 Ethernet connections from all IEDs to a Contractor-provided Ethernet switch. All SEL IEDs will use SEL Fast Messaging protocol unless required data dictates DNP3 protocol to be used. Any non-SEL IEDs will utilize DNP3 protocol. The RTAC shall be connected through the same Ethernet switch using RJ45 Ethernet connections provided by Contractor.

Contractor will develop a separate I/O points list of all data in the RTAC for each connection defined in this section 2.13.A.ii. These point lists shall include all addressing information necessary to allow for a fully functional Remote Terminal Unit (RTU) system among all entities. Contractor shall submit this list for approval no later than 2 months before scheduled mobilization of SCADA testing on site. Owner shall return comments on this list within 10 business days after issuing for approval. The I/O points shall include analog and digital data. No controls will be implemented as part of this scope.

A. Communications and settings

i. Contractor shall provide

a. Fiber optic connection suitable for all connections available for direct connection into a patch panel within the Interconnection Substation

b. TCP/IP configuration (IP addresses, network information) as required

c. Preferred method of I/O alarm descriptions including structure and priority as defined in the I/O Points List

d. Interconnection Utility and monitoring entity system requirements for data collected from the Interconnection Substation IEDs

ii. Contractor shall configure four (4) connections to entities external to the substation real-time automation controller (RTAC)

a. Interconnecting Utility Company's RTU

(i.) I/O points list provided by Utility

(ii.) Connection will use DNP3 protocol

(iii.) Maximum of fifty (50) data points

(iv.) Control of 345kV breaker via Utility Company

b. Dispatch System

(i.) Contractor shall provide I/O points list detailing available data points from the Interconnection Substation and the generation SCADA

Interface

(ii.) Owner shall have ten (10) days to review and approved list prior to programming

(iii.) Connection will use DNP3 protocol

c. SCADA Interface (developed by others)

(i.) Contractor shall provide list detailing required I/O data points from this system

d. Regional Monitoring Entity (developed by others)

(i.) Contractor shall provide list detailing required I/O data points from this system

(ii.) Connection will use DNP3 protocol

(iii.) Connection shall gather required information from IEDs

iii. Contractor shall develop I/O Point List – Alarm Database

a. I/O Points list will be created to include relevant relay data points from the above listed IEDs for each connection in 1.2

b. Alarm description structure shall be approved by Owner before programming and configuration of Data Concentrator, Computing Platform

iv. Software and computing platform

a. Programming and configuration of one (1) RTAC data concentrators with the points defined in the I/O Points Lists as defined above

v. Contractor-provided communications drawings

a. One (1) Communication Architecture Diagram (pdf)

b. One (1) Panel Schematic Diagram

c. One (1) Panel Wiring Diagram

d. One (1) Panel Layout Diagram

vi. Testing

a. Contractor will test and commission all connections and points associated with the SCADA System using an experienced in-house testing division or other qualified field service specialist

b. Certified test reports conforming to industry accepted format shall be provided upon request

vii. Commissioning

a. Representatives from each entity in this section 2.13.A.ii are expected to be on site during commissioning

b. Contractor shall have an engineer or designated representative on site to assist and correct any errors in the programming or configuration

viii. Contractor's scope **excludes:**

a. Graphical interfaces (Contractor is responsible for passing data only)

b. Remote connections to the RTAC or IEDs (telemetry data only supplied to

devices listed in 1.2)

c. Connections to any devices located outside the substation perimeter fence (inverters, met stations, etc.)

d. Emails, text messaging, or paging of any alarms that are included in this scope

e. Event report collection

f. Data storage (real-time data only)

g. Remote operation of breakers

2.13. Transmission Line (subject to change specific quantities and specs at 30% design)

Contractor to design and construct a radial 345 kV circuit consisting of approximately 5 miles of overhead Transmission line from the proposed Interconnection Substation to the Point of Interconnection. ROW shall be provided by Owner. Contractor will install structures between the Point of Interconnection and the Interconnection Substation as required to meet NESC requirements based on the appropriate loading zone. Structures shall be standard Rural Utility Service approved structures, direct embedded with native backfill. The circuit shall be designed to carry a minimum capacity of 100 MW. Line shall also include (1) 48-Fiber OPGW.

A. Transmission line (all lengths are approximations, final pole quantities, locations and span lengths to be determined at time of line design/engineering):

i. Conductor - approximately 26,400 feet

ii. 3/8" 7 strand EHS steel shield wire - 26,400 feet

iii. 48-Fiber optical ground wire - 26,400 feet

iv. Fiberoptic splice boxes as needed

v. Lot – Transmission assemblies including poles, insulators, connectors, guys and anchors

2.14. Grid Charging

Contractor shall construct the ESS to accept Charging Energy from both the electrical grid and PV Power Plant and shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from both the electrical grid and PV Power Plant by the Substantial Completion Date.

2.15. ESS Unit

ESS Unit meet the requirements below, collectively "**ESS Unit Capabilities**."

A. Guaranteed PMAX of 30 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 15.3

B. Guaranteed ESS Capacity: discharge ESS at Guaranteed PMAX for Four and 21/100ths (4.21) consecutive hours; starting at the Maximum State of Charge and ending at the Minimum State of Charge

C. Guaranteed ESS Roundtrip Efficiency: 87.1%; ESS designed for annual ESS Roundtrip Efficiency degradation $< 0.5\%$

D. Guaranteed Discharge Ramp Rate of Guaranteed PMAX per second measured between 85% State of Charge and 15% State of Charge representing the maximum rate that the ESS can change its output power

E. Guaranteed Charge Ramp Rate of Guaranteed PMAX per second measured between 15% State of Charge to 85% State of Charge representing the maximum rate that the ESS can change its input power

F. Guaranteed System Latency: <1 second

G. Guaranteed Frequency Response Capability of Guaranteed PMAX/0.1Hz

H. Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing

3. ELECTRICAL INSTALLATION

3.1. General

A. All work to be installed in a workmanlike manner, consistent with Industry Standards and other applicable standards set forth in the Agreement.

B. Cable management shall meet or exceed Industry Standards inclusive of moisture and vermin access prevention at transition points into conduit.

C. Cable runs shall be made parallel and perpendicular only to array mounting system.

D. For the Plant, no overall lighting or security systems will be provided.

3.2. DC System Cabling

A. Series string connections between modules will be via quick connect connectors factory-supplied with modules.

B. Series string circuits may be combined in parallel into a single circuit running back to a combiner box. Parallel connections will be made using factory-supplied wiring harnesses consisting of pre-cut lengths of minimum 12 AWG cable with quick connects. Trunk bus with a load-break disconnect is an acceptable alternative.

C. DC wiring from the combiner box or load-break disconnect to the inverters shall have detectable marker tape placed 12" below grade continuously over the conductors. Trench bedding shall be adequate to prevent damage to the cable from any oversized material. As-built drawings will show the location of the underground wiring.

D. DC cable shall be 1.5kV minimum 90°C (wet or dry), XLPE insulation cable type designated as RHW-2 Conductors may be stranded copper or aluminum.

E. Exposed cables shall be UV resistant and outdoor rated.

F. DC cabling shall be mechanically protected where subject to damage when transitioning from above grade routing to below grade. Rigid non-metallic conduit (PVC Sch 40) or equivalent will be utilized for this purpose.

3.3. AC System Cabling (600V and below)

A. All conductors, lugs and cable accessories shall be UL listed, or equivalent.

B. Cables installed in raceways shall be type THHN/THWN-2, XHHW-2.

C. Conductors may be stranded copper or aluminum.

D. Cables installed in direct burial applications shall be type USE-2 with XLPE insulation

or other insulations listed for the application. Conductors may be stranded copper or aluminum.

3.4. Medium Voltage Cable

A. Conductors shall be 35kV type MV-105, (dry or wet) single compact conductor, copper or aluminum, 100% or 133% TR XLPE or EPR insulation, copper tape shield. Alternative conductor specifications, such as using a full-size concentric neutral, shall be allowed upon review and acceptance by Owner.

B. Contractor shall have the option of selecting one of the following cable constructions:

i. Single conductors, PVC or polyethylene jacketed, suitable for direct burial. A bare copper equipment grounding conductor shall be routed with the feeder

ii. Multi-conductor cable assembly-non armored. Three single insulated conductors with ground wire, all under an overall PVC jacket, suitable for direct burial.

iii. Single or Multi-conductor cable assembly-armored. Three single conductors with ground wire, all under an interlocked metallic armor, suitable for direct burial.

C. Conductors shall be direct buried a minimum of 36" below grade or installed in conduit or raceway. A detectable marker tape shall be placed 12" below grade continuously over the conductors.

D. Medium voltage terminations shall be cold shrink, outdoor rated for live front applications and shall be of IEEE-386, or equivalent class for non-load break, dead front applications.

3.5. Grounding

A. All ground conductors shall be stranded copper, bare copper, or copper-clad steel.

B. Ground lugs shall be mechanical or irreversible compression style.

C. A grounding electrode system consisting of a ring shall be installed at each PCS.

D. Module frames, mounting structure and combiner boxes shall be grounded per NEC requirements.

E. All below grade connections shall be compression type and UL listed, or equivalent for direct burial applications.

F. Transformers and inverters/PCS units shall be bonded to the ground ring.

G. One ground test well shall be furnished at each PCS in the PV Plant. Contractor shall propose for Owner's review and approval the quantity of ground test wells in the ESS area..

3.6. Labeling and Identification

A. All multi-string harness inputs to each combiner box and the combiner boxes themselves shall be uniquely tagged and identified. These cables shall have a label affixed to the outer jacket with a Brady or equivalent cable marker at each termination.

B. Electrical equipment shall be labeled to meet applicable safety codes and requirements.

3.7. Electrical Equipment Enclosures

A. Control Cabinets, pull-boxes and junction boxes shall be in accordance with NEMA Standards and type number and shall be suitable for the location conditions. Minimum base design shall be:

3.7.1.1	Indoor:	NEMA 1
3.7.1.2	Outdoor:	NEMA 3R

B. All enclosures shall be provided with pad locking provisions.

3.8. Lightning Protection

A. Lightning protection is included at the SCC only.

B. Lightning protection, (where installed) shall be limited to air terminals, down conductors and a connection to the PCS grounding electrode loop as well as surge arrestors.

C. Protection at the module arrays or at the PCS is not included.

4. SITE WORK

4.1. Site Preparation

A. Design for the Plant shall take into account Site Conditions in an effort to minimize Site disturbance, subject to the Site Assumptions. Owner shall be responsible for all Site preparation in relation to the Site Assumptions set forth in Exhibit L.

B. Site grading to be performed by Contractor, if any, shall be compatible with the general topography and uses of adjacent properties, right-of-way, set back and easements.

4.2. Site Access

A. Contractor shall provide all temporary and permanent access roads for the Site. Permanent perimeter roads, and interior roads for the Site will be completed after construction has been completed.

B. Contractor shall provide any access roads up to the Fence of the Site. Such access roads shall not be less than 25 feet in width, stabilized, and shall be capable of supporting heavy truck traffic.

C. Contractor shall provide stabilized access roads within the Site. Stabilization shall be accomplished by the additional of 4" light-colored gravel or other material approved by Owner. All temporary access roadways used by Contractor for the Plant shall be maintained by Contractor in serviceable condition prior to Substantial Completion of the Plant, to the extent that Contractor causes degradation of the same in excess of normal wear and tear to perform the Work.

4.3. Fencing

A. Contractor shall provide the permanent Fence for the Site, subject to Owner's fencing standards (Exhibit U) and Owner's approval of Contractor's plot plan identifying access, egress, laydown and storage areas, and turn-around ratios required for deliveries. Fence provided by Contractor shall incorporate the appropriate grounding.

B. Site fencing shall comply with Applicable Laws, Applicable Permits and Industry Standards.

4.4. Grading and Drainage

A. Contractor shall perform grading and drainage, if needed, for the Site.

B. Contractor shall establish storm water management controls for the Project.

C. Contractor shall maintain such controls during construction at the Site of such Project.

D. Contractor shall take appropriate measures, including dewatering due to storm water, to prevent the foundation and trenched areas from becoming destabilized by the flow of water into the excavation or by cave-ins or slippage.

4.5. Excavating, Filling and Backfilling

A. Contractor shall be responsible for performing all operations in connection with underground DC and AC cabling and equipment pads. Backfill shall be compacted to 90 to 95% of maximum dry density within a moisture content range of +2% of optimum moisture as determined by ASTM D698.

B. Contractor shall be responsible for performing all excavation, filling, and backfilling operations for the equipment pads and buildings. Subgrade beneath buildings and equipment pads, and backfill for foundations shall be compacted in accordance with geotechnical report for the Site.

4.6. Dust Control:

A. Contractor shall be responsible for compliance with state and local requirements for fugitive dust emissions. Contractor shall obtain local authority approvals and conform to the dust control regulations.

4.7. Soil Erosion and Sediment Control

A. Contractor shall develop soil erosion and sediment control plans, and install BMPs in accordance with the local erosion and sediment control regulations and in a manner acceptable to Owner. Contractor shall maintain applicable erosion and sediment control systems throughout construction at the Site.

4.8. Water

A. Contractor shall be responsible for water source for construction use (daily quantity to 30,000 gal per day beginning on the Notice to Proceed Date of the Project). Contractor to provide water usage report to Owner in Monthly Progress Report.

5. STRUCTURAL

5.1. Equipment Foundations

A. Install structural pad or foundations for PCS and medium voltage transformers.

B. Foundations shall be of sufficient strength and stiffness to support anticipated loads and load combinations imposed by applicable code requirements.

C. Foundation recommendations, allowable soil bearing capacities, and solar panel support post embedment depths shall be based on a geotechnical report for the Site.

D. The following foundation design criteria shall be used:

i. Foundations shall be designed using static analysis techniques assuming rigid elements and linear soil pressure distribution such that the allowable settlement and bearing pressure criteria are not exceeded.

ii. Foundation stability to be designed in accordance with IBC standards using the appropriate factors of safety.

E. Concrete

i. Reinforced concrete structures shall be designed and constructed in accordance with ACI 318-05, Building Code Requirements for Reinforced Concrete. Concrete work

shall conform to the requirements of ACI 301, Specifications for Structural Concrete.

ii. Concrete production, proportioning and placing as well as the formwork, reinforcing, joints and embedded items, repair, curing and protection shall all be in accordance with the applicable ACI Standards and Specifications.

iii. Reinforcing bars shall be deformed bars conforming to ASTM A615, Grade 60. Welded wire fabric shall conform to ASTM A185.

iv. Cement shall be Portland cement conforming to ASTM C150, Type (as required by soil conditions and geotechnical report for the Site), minimum 28 day compressive strength f'c = 4000 psi.

v. Aggregates for normal weight concrete shall conform to ASTM C33.

F. Module Support Structures

i. Support structures shall be designed to withstand dead load of modules and hardware, snow loads (if applicable), seismic loads, and wind loads based on applicable criteria specified in Table A-1- 1, and the ASCE. If wind tunnel testing results are available, these may be used in the design in lieu of loading required by the ASCE.

ii. Pile driving: See applicable requirements set forth in Table A-1-1.

iii. Structural Steel.

a. Materials for structural steel and miscellaneous steel shall conform to the requirements of one of the following standards: ASTM A36/ASTM A572 Grade 50/ASTM A992 Grade 50, Grade 60, or Grade 65;

b. Materials for structural steel and miscellaneous steel may conform to Chinese GB Standard GB/T 11263 Hot Rolled Sections Grade Q345 (50 KSI Min yield) or welded Q345 profiles conforming to ASTM A769/A769M.

c. High strength bolts for sizes ½ in. diameter and larger shall conform to ASTM A325 or AISC A490. Sizes below ½ in. diameter shall conform to ASTM A449.3. Cold formed sheet steel shall be in accordance with requirements of one of the following standards: ASTM A1008/A1008M, ASTM A1003/A1003M: ASTM A653/A653M, or ASTMA 792.

iv. Anchor bolts shall conform to the requirements of one of the following standards: ASTM A307, ASTM A36, or ASTM F1554;

v. nuts shall conform to ASTM A563, grade A or grade DH;

vi. washers shall conform to ASTM F346; [and/or]

vii. anchor bolt sleeves shall conform to ASTM A501.

G. Clips shall be fabricated from stainless steel SS201, conforming to ASTM A666. Associated fasteners shall be made up of stainless steel SS18-8, conforming to ASTM A193.

H. Spring lock shall be fabricated out of spring steel wires, conforming to AISI 1010.

I. Corrosion protection

i. corrosion protection of piles will be provided by galvanizing the whole pile section using the hot-dip process, in accordance with ASTM A123, with a coating thickness of 3 mils.

ii. corrosion protection for PV module framing system will be provided either by galvanizing in accordance with ASTM A653, with a coating thickness of G90 (0.8 mils); or aluminum-zinc alloy in accordance with ASTM A792, with a coating thickness of AZ35 (0.56 mils).

iii. corrosion protection for hardware shall be zinc plated in accordance with ASTM B633.

iv. cathodic protection is not included.

6. COMMISSIONING AND PERFORMANCE TESTING

See Exhibits H-1 and H-2 for requirements of commissioning, process and testing with respect to the Plant.

7. DESIGN ENGINEERING

Engineering Design Package: Contractor shall develop a comprehensive design package for the Plant in accordance with Exhibit B to this Agreement.

EXHIBIT A-2

OWNER-PROVIDED FACILITIES AND SERVICES

1. GENERAL

1.1. Owner Scope of Work Overview:

A. Owner shall coordinate with Contractor to finalize the plan for the geotechnical study, including boring and test pit locations and quantities appropriate for the Plant's layout.

B. Owner shall neither supply water source nor pay consumption costs.

C. Owner shall perform all engineering work related to obtaining approvals from the Transmission Provider, utility and/or applicable agencies for electrical interconnection. This includes filing documents and paying associated fees as set forth in the LGIA to effectuate the timely construction of the Transmission Provider's Interconnection Facilities by the relevant dates set forth in this Agreement. Owner shall be responsible for all costs and schedule impacts resulting from the Transmission Provider's studies and construction of the Transmission Provider's Interconnection Facilities. This includes the necessary agreements with the Transmission Provider for the provision of Charging Energy.

D. Owner shall provide environmental and land use planning permit approvals for the Site as required to satisfy Applicable Laws and Applicable Permits.

E. Owner shall provide a boundary survey of the existing Site.

F. To help ensure that Owner and Contractor are in full alignment with respect to coordinating activities for the Project, Owner shall provide Contractor with the following Owner deliverables for the Project upon initiation of Contractor's design efforts for the Project. It shall be understood that Contractor fully intends to rely on the following information during the execution of the Work with respect to the Project.

i. Conceptual Site plan: for the Project, to include location and approximate dimensions of Owner-Provided Facilities and Services, including, but not limited to,

1. Transmission Provider's Interconnection Facilites switchyard,
2. Transmission line routing including structure height and shape to assist in shading analysis,
3. Required turning radii for Contractor provided access roads,
4. Any future infrastructure locations, corridors, duct banks as Owner wishes Contractor to incorporate into its designs, and
5. Any areas that the Owner considers to be No Fly Zones.

G. Owner agrees that it shall provide Contractor with remote access (and physical access to the extent provided herein) to the supervisory control and data acquisition system furnished by Contractor under the Agreement (the "Data Access Obligations") for purposes of providing Contractor with real-time and/or recorded performance data produced from the Project (the "Performance Data"). Such agreement shall survive the termination (for any reason) of the Agreement but in any event shall terminate upon the termination of the Module Warranty Terms and Conditions applicable to the PV Power Plant. Any hardware or software necessary for Contractor to have such remote access and to collect such Performance Data shall be provided by Contractor, and be maintained and monitored by Contractor, at Contractor's expense. Owner shall provide Contractor with physical access to the Project hardware as reasonably necessary for Contractor to install such hardware or software and to perform periodic maintenance and monitoring of such hardware or software. Contractor may use such Performance Data solely for the following purposes:

i. to verify the performance of the PV Power Plant with respect to the obligations under the

applicable Module Warranty Terms and Conditions;

ii. to verify and refine the accuracy of Contractor's energy predictions; and

iii. in publications as an input to general data information regarding the overall performance of the modules over multiple projects, provided, however, that the Performance Data does not expressly identify the PV Power Plant.

Any other use shall require the Owner's prior written consent. Owner shall require that until the expiration of the applicable Module Warranty Terms and Conditions, any transferee assuming ownership of such Project must comply with the Data Access Obligations and any such transferee shall require subsequent transferees to comply with the Data Access Obligations until the expiration of the applicable Module Warranty Terms and Conditions.

H. Owner hereby grants to Contractor a paid-up, non-exclusive, world-wide license for Contractor and its Affiliates to use the Intellectual Property Rights related to the Data Acquisition System and any other Intellectual Property Rights owned or licensed by Owner necessary for Contractor to exercise its rights with respect to the Performance Data for the Project; provided, however, that such license may be revoked or otherwise terminated in the event that any use by Contractor of Intellectual Property Rights conferred hereby on Contractor under this Agreement is not in accordance with the terms of this Agreement.

I. Site shall have security systems sufficient to comply with Applicable Laws, Applicable Permits and Industry Standards.

1.2. Related Information. This Exhibit A-2 shall include the information regarding specific Owner-Provided Facilities and Services for the Project including the following:

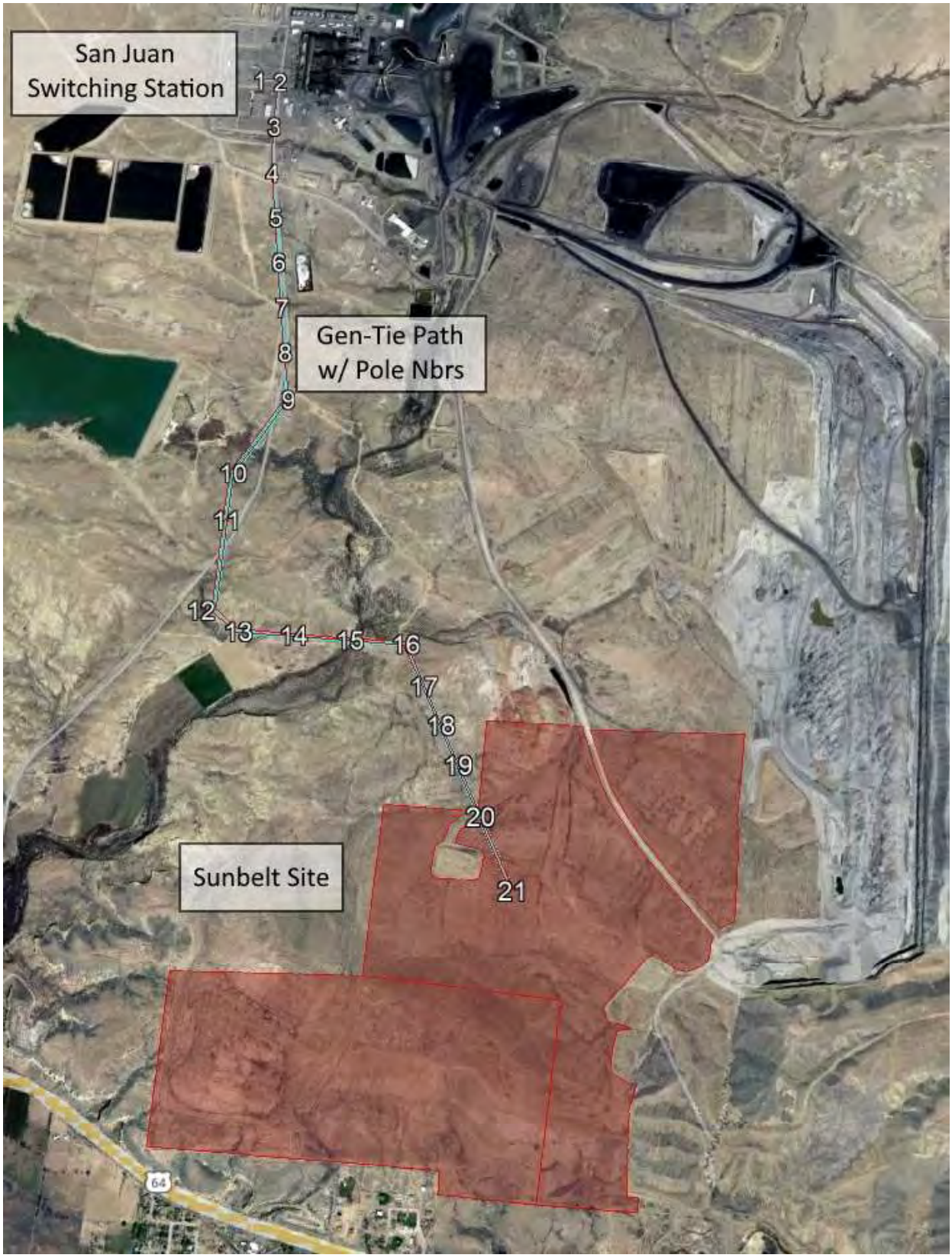
A. Communications line to SCC

B. Fiber from SCC to Fence line

EXHIBIT A-3

OWNER-PROVIDED INFORMATION

- Site boundary surveys and any parcel maps available
- Any relevant preliminary design information pursuant to the Use Permit application process
- NMDOT or county requirements for traffic ingress to the Site
- Any Project or Site related information identified in Exhibit A-2 available prior to contract execution



Preliminary Layout

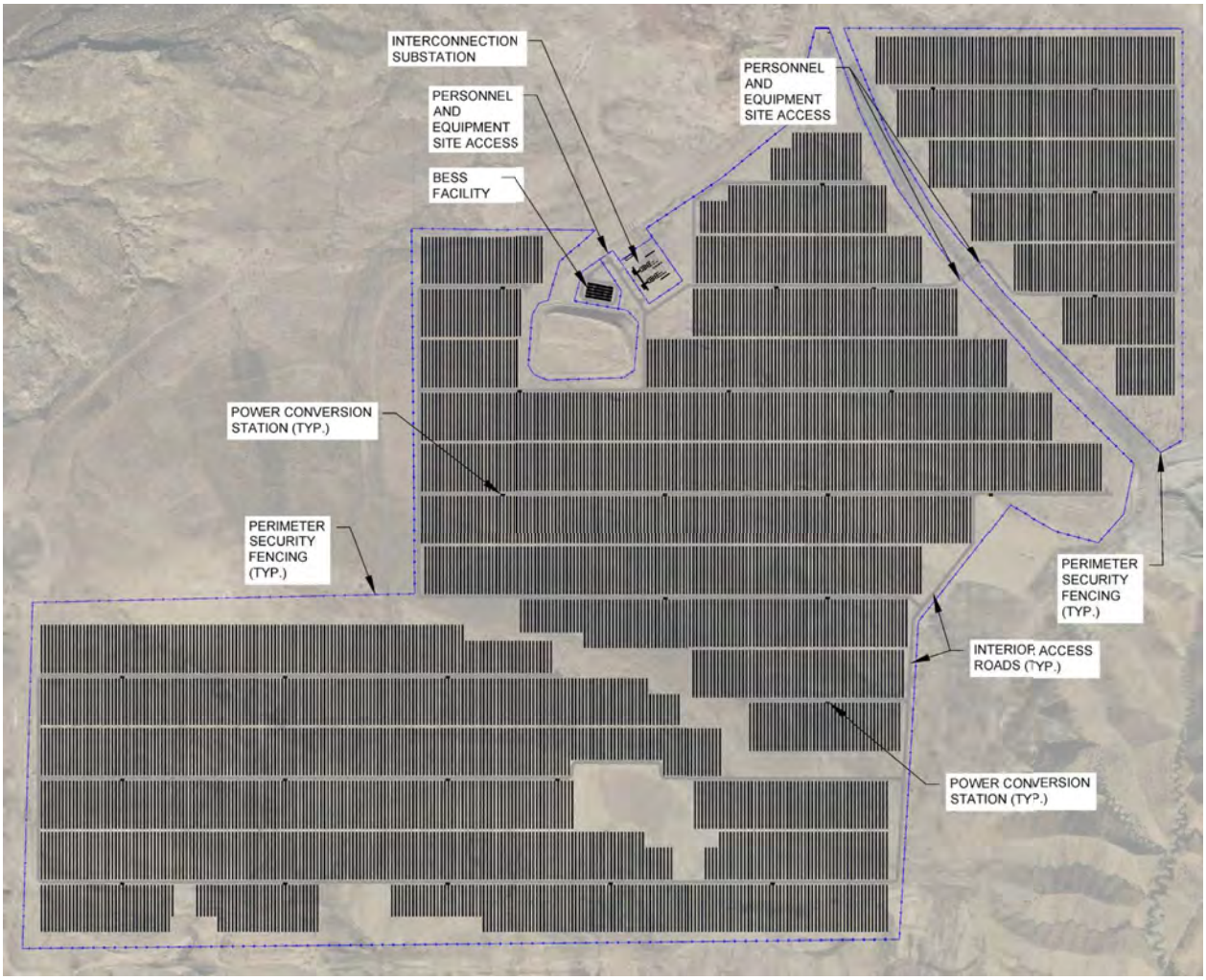


EXHIBIT A-4

INTERCONNECTION AGREEMENT

STANDARD LARGE GENERATOR

INTERCONNECTION AGREEMENT

BETWEEN

**PUBLIC SERVICE COMPANY OF NEW MEXICO –
TECHNICAL SERVICES**

AND

PUBLIC SERVICE COMPANY OF NEW MEXICO

(San Juan Solar Project 95.6 MW)

TABLE OF CONTENTS

STANDARD LARGE GENERATOR INTERCONNECTION AGREEMENT

THIS STANDARD LARGE GENERATOR INTERCONNECTION AGREEMENT ("Agreement") is made and entered into this 28th day of January 2021, by and between Public Service Company of New Mexico – Technical Services ("Interconnection Customer"), and Public Service Company of New Mexico, a corporation organized and existing under the laws of the State of New Mexico ("Transmission Provider" or "Transmission Owner"). Interconnection Customer and Transmission Provider each may be referred to as a "Party" or collectively as the "Parties."

Recitals

WHEREAS, Transmission Provider operates the Transmission System; and

WHEREAS, Interconnection Customer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and,

WHEREAS, Interconnection Customer and Transmission Provider have agreed to enter into this Agreement for the purpose of interconnecting the Large Generating Facility with the Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

When used in this Standard Large Generator Interconnection Agreement, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used or the Open Access Transmission Tariff (Tariff).

Article 1. Definitions

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the reliability council applicable to the Transmission System to which the Generating Facility is directly interconnected.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Control Area of the Transmission System to which the Generating Facility is directly interconnected.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Large Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Large Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Impact Study.

Commercial Operation shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

Commercial Operation Date of a unit shall mean the date on which the Generating Facility commences Commercial Operation as agreed to by the Parties pursuant to Appendix E to the Standard Large Generator Interconnection Agreement.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by the Applicable Reliability Council.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the Standard Large Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Large Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC.

Emergency Condition shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected; or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by the Standard Large Generator Interconnection Agreement to possess black start capability.

Energy Resource Interconnection Service shall mean an Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of the Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a et seq.

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

Generating Facility shall mean Interconnection Customer's device for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined in Section 8 of the Standard Large Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in Section 6 of the Standard Large Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to the Standard Large Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the

Standard Large Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

IRS shall mean the Internal Revenue Service.

Joint Operating Committee shall be a group made up of representatives from Interconnection Customers and the Transmission Provider to coordinate operating and technical considerations of Interconnection Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the Standard Large Generator Interconnection Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnifying Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the Standard Large Generator Interconnection Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Resource shall mean any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale

to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

Network Resource Interconnection Service shall mean an Interconnection Service that allows the Interconnection Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Large Generator Interconnection Agreement or its performance.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Generator Interconnection Procedures for conducting the Optional Interconnection Study.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Provisional Interconnection Service shall mean Interconnection Service provided by Transmission Provider associated with interconnecting the Interconnection Customer’s Generating Facility to Transmission Provider’s Transmission System and enabling that Transmission System to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Provisional Large Generator Interconnection Agreement and, if applicable, the Tariff.

Provisional Large Generator Interconnection Agreement shall mean the interconnection agreement for Provisional Interconnection Service established between Transmission Provider and/or the Transmission Owner and the Interconnection Customer. This agreement shall take the form of the Large Generator Interconnection Agreement, modified for provisional purposes.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Site Control shall mean documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility that has a Generating Facility Capacity of no more than 20 MW.

Stand Alone Network Upgrades shall mean Network Upgrades that are not part of any Affected System that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement. If the Transmission Provider and Interconnection Customer disagree about whether a particular Network Upgrade is a Stand Alone Network Upgrade, the Transmission Provider must provide the Interconnection Customer a written technical explanation outlining why the Transmission Provider does not consider the Network Upgrade to be a Stand Alone Network Upgrade within 15 days of its determination.

Standard Large Generator Interconnection Agreement (LGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility that is included in the Transmission Provider's Tariff.

Standard Large Generator Interconnection Procedures (LGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in the Transmission Provider's Tariff.

Surplus Interconnection Service shall mean any unneeded portion of Interconnection Service established in a Large Generator Interconnection Agreement, such that if Surplus Interconnection Service is utilized the total amount of Interconnection Service at the Point of Interconnection would remain the same.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Large Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to Commercial Operation.

Variable Energy Resource shall mean a device for the production of electricity that is characterized by an energy source that: (1) is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator.

Article 2. Effective Date, Term, and Termination

2.1 Effective Date. This LGIA shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. Transmission Provider shall promptly file this LGIA with FERC upon execution in accordance with Article 3.1, if required.

2.2 Term of Agreement. Subject to the provisions of Article 2.3, this LGIA shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as Interconnection Customer may request (Term to be specified in individual agreements) and shall be automatically renewed for each successive one-year period thereafter.

2.3 Termination Procedures.

2.3.1 Written Notice. This LGIA may be terminated by Interconnection Customer after giving Transmission Provider ninety (90) Calendar Days advance written notice, or by Transmission Provider notifying FERC after the Generating Facility permanently ceases Commercial Operation.

2.3.2 Default. Either Party may terminate this LGIA in accordance with Article 17.

2.3.3 Notwithstanding Articles 2.3.1 and 2.3.2, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this LGIA, which notice has been accepted for filing by FERC.

2.4 Termination Costs. If a Party elects to terminate this Agreement pursuant to Article 2.3 above, each Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the Terminating Party under this LGIA. In the event of termination by a Party, the Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this LGIA, unless otherwise ordered or approved by FERC:

2.4.1 With respect to any portion of Transmission Provider's Interconnection Facilities that have not yet been constructed or installed, Transmission Provider shall to the extent possible and with Interconnection Customer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Interconnection Customer elects not to authorize such cancellation, Interconnection Customer shall assume all payment obligations with respect to such materials, equipment, and contracts, and Transmission Provider shall deliver such material and equipment, and, if necessary, assign such contracts, to Interconnection Customer as soon as practicable, at Interconnection Customer's expense. To the extent that Interconnection Customer has already paid Transmission Provider for any or all such costs of materials or equipment not taken by Interconnection Customer, Transmission Provider shall promptly refund such amounts to Interconnection Customer, less any costs, including penalties incurred by Transmission Provider to cancel any pending orders of or return such materials, equipment, or contracts.

If an Interconnection Customer terminates this LGIA, it shall be responsible for all costs incurred in association with that Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment, and other expenses including any Network Upgrades for which Transmission Provider has incurred expenses and has not been reimbursed by Interconnection Customer.

2.4.2 Transmission Provider may, at its option, retain any portion of such materials, equipment, or facilities that Interconnection Customer chooses not to accept delivery of, in which case Transmission Provider shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this LGIA, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 **Disconnection**. Upon termination of this LGIA, the Parties will take all appropriate steps to disconnect the Large Generating Facility from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this LGIA or such non-terminating Party otherwise is responsible for these costs under this LGIA.

2.6 **Survival**. This LGIA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this LGIA; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this LGIA was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this LGIA or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

Article 3. Regulatory Filings

3.1 **Filing**. Transmission Provider shall file this LGIA (and any amendment hereto) with the appropriate Governmental Authority, if required. Interconnection Customer may request that any information so provided be subject to the confidentiality provisions of Article 22. If Interconnection Customer has executed this LGIA, or any amendment thereto, Interconnection Customer shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements.

Article 4. Scope of Service

4.1 **Interconnection Product Options**. Interconnection Customer has selected the following type of Interconnection Service: **Energy Resource Interconnection Service (pursuant to Article 4.1.1 below).**

4.1.1 Energy Resource Interconnection Service.

4.1.1.1 **The Product**. Energy Resource Interconnection Service allows Interconnection Customer to connect the Large Generating Facility to the Transmission System and be eligible to deliver the Large Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an "as available" basis. To the extent Interconnection Customer wants to receive Energy Resource Interconnection Service, Transmission Provider shall construct facilities identified in Attachment A.

4.1.1.2 **Transmission Delivery Service Implications**. Under Energy Resource Interconnection Service, Interconnection Customer will be eligible to inject power from the Large Generating Facility into and deliver power across the interconnecting Transmission Provider's Transmission System on an "as available" basis up to the amount of MWs identified in the applicable stability and steady state studies to the extent the upgrades initially required to qualify for Energy Resource Interconnection Service have been constructed. Where eligible to do so (e.g., PJM, ISO-NE, NYISO), Interconnection Customer may place a bid to sell into the market up to the maximum identified Large Generating Facility output, subject to any conditions specified in the interconnection service approval, and the Large Generating Facility will be dispatched to the extent Interconnection Customer's bid clears. In all other instances, no transmission delivery service from the Large Generating Facility is assured, but Interconnection Customer may obtain Point-to-Point Transmission Service, Network Integration Transmission Service, or be used for secondary network transmission service, pursuant to Transmission Provider's Tariff, up to the maximum output identified in the stability and steady state studies. In those instances, in order for Interconnection Customer to obtain the right to deliver or inject energy beyond the Large Generating Facility Point of Interconnection or to improve its ability to do so, transmission delivery service must be obtained pursuant to the provisions of Transmission Provider's Tariff. The Interconnection Customer's ability to inject its Large Generating Facility output beyond the Point of Interconnection, therefore, will depend on the existing capacity of Transmission Provider's Transmission System at such time as a transmission service request is made that would accommodate such delivery. The provision of firm Point-to-Point Transmission Service or Network Integration Transmission Service may require the construction of additional Network Upgrades.

4.1.2 Network Resource Interconnection Service.

4.1.2.1 **The Product**. Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility (1) in a manner comparable to that in which Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all Network Resources. To the extent Interconnection Customer wants to receive Network Resource Interconnection Service, Transmission Provider shall construct the facilities identified in Attachment A to this LGIA.

4.1.2.2 **Transmission Delivery Service Implications**. Network Resource Interconnection Service allows Interconnection Customer's Large Generating Facility to be designated by any Network Customer under the Tariff on Transmission Provider's Transmission System as a Network Resource, up to the Large Generating Facility's full

output, on the same basis as existing Network Resources interconnected to Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. Although Network Resource Interconnection Service does not convey a reservation of transmission service, any Network Customer under the Tariff can utilize its network service under the Tariff to obtain delivery of energy from the interconnected Interconnection Customer's Large Generating Facility in the same manner as it accesses Network Resources. A Large Generating Facility receiving Network Resource Interconnection Service may also be used to provide Ancillary Services after technical studies and/or periodic analyses are performed with respect to the Large Generating Facility's ability to provide any applicable Ancillary Services, provided that such studies and analyses have been or would be required in connection with the provision of such Ancillary Services by any existing Network Resource. However, if an Interconnection Customer's Large Generating Facility has not been designated as a Network Resource by any load, it cannot be required to provide Ancillary Services except to the extent such requirements extend to all generating facilities that are similarly situated. The provision of Network Integration Transmission Service or firm Point-to-Point Transmission Service may require additional studies and the construction of additional upgrades. Because such studies and upgrades would be associated with a request for delivery service under the Tariff, cost responsibility for the studies and upgrades would be in accordance with FERC's policy for pricing transmission delivery services.

Network Resource Interconnection Service does not necessarily provide Interconnection Customer with the capability to physically deliver the output of its Large Generating Facility to any particular load on Transmission Provider's Transmission System without incurring congestion costs. In the event of transmission constraints on Transmission Provider's Transmission System, Interconnection Customer's Large Generating Facility shall be subject to the applicable congestion management procedures in Transmission Provider's Transmission System in the same manner as Network Resources.

There is no requirement either at the time of study or interconnection, or at any point in the future, that Interconnection Customer's Large Generating Facility be designated as a Network Resource by a Network Service Customer under the Tariff or that Interconnection Customer identify a specific buyer (or sink). To the extent a Network Customer does designate the Large Generating Facility as a Network Resource, it must do so pursuant to Transmission Provider's Tariff.

Once an Interconnection Customer satisfies the requirements for obtaining Network Resource Interconnection Service, any future

transmission service request for delivery from the Large Generating Facility within Transmission Provider's Transmission System of any amount of capacity and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with such Large Generating Facility be undertaken, regardless of whether or not such Large Generating Facility is ever designated by a Network Customer as a Network Resource and regardless of changes in ownership of the Large Generating Facility. However, the reduction or elimination of congestion or redispatch costs may require additional studies and the construction of additional upgrades.

To the extent Interconnection Customer enters into an arrangement for long term transmission service for deliveries from the Large Generating Facility outside Transmission Provider's Transmission System, such request may require additional studies and upgrades in order for Transmission Provider to grant such request.

4.2 **Provision of Service**. Transmission Provider shall provide Interconnection Service for the Large Generating Facility at the Point of Interconnection.

4.3 **Performance Standards**. Each Party shall perform all of its obligations under this LGIA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this LGIA for its compliance therewith. If such Party is a Transmission Provider or Transmission Owner, then that Party shall amend the LGIA and submit the amendment to FERC for approval.

4.4 **No Transmission Delivery Service**. The execution of this LGIA does not constitute a request for, nor the provision of, any transmission delivery service under Transmission Provider's Tariff, and does not convey any right to deliver electricity to any specific customer or Point of Delivery.

4.5 **Interconnection Customer Provided Services**. The services provided by Interconnection Customer under this LGIA are set forth in Article 9.6 and Article 13.5.1. Interconnection Customer shall be paid for such services in accordance with Article 11.6.

Article 5. Interconnection Facilities Engineering, Procurement, and Construction

5.1 **Options**. Unless otherwise mutually agreed to between the Parties, Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either the Standard Option or Alternate Option set forth below, and such dates and selected option shall be set forth in Appendix B, Milestones. At the same time, Interconnection Customer shall indicate whether it elects to exercise the Option to Build set forth in article 5.1.3 below. If the dates designated by Interconnection Customer are not acceptable to Transmission Provider, Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days. Upon receipt of the notification that Interconnection Customer’s designated dates are not acceptable to Transmission Provider, the Interconnection Customer shall notify Transmission Provider within thirty (30) Calendar Days whether it elects to exercise the Option to Build if it has

not already elected to exercise the Option to Build. **(NOTE: the Standard Option (pursuant to Article 5.1.1) will be used for completion of Transmission Provider's Interconnection Facilities and the Network Upgrades.)**

5.1.1 Standard Option. Transmission Provider shall design, procure, and construct Transmission Provider's Interconnection Facilities and Network Upgrades, using Reasonable Efforts to complete Transmission Provider's Interconnection Facilities and Network Upgrades by the dates set forth in Appendix B, Milestones. Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event Transmission Provider reasonably expects that it will not be able to complete Transmission Provider's Interconnection Facilities and Network Upgrades by the specified dates, Transmission Provider shall promptly provide written notice to Interconnection Customer and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 Alternate Option. If the dates designated by Interconnection Customer are acceptable to Transmission Provider, Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities by the designated dates.

If Transmission Provider subsequently fails to complete Transmission Provider's Interconnection Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation; or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Milestones; Transmission Provider shall pay Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Interconnection Customer shall be extended day for day for each day that the applicable RTO or ISO refuses to grant clearances to install equipment.

5.1.3 Option to Build. Interconnection Customer shall have the option to assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades on the dates specified in Article 5.1.2. Transmission Provider and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A. Except for Stand Alone Network Upgrades, Interconnection Customer shall have no right to construct Network Upgrades under this option.

5.1.4 Negotiated Option. If the dates designated by Interconnection Customer are not acceptable to Transmission Provider, the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of all facilities other than Transmission Provider's Interconnection

Facilities and Stand Alone Network Upgrades if the Interconnection Customer elects to exercise the Option to Build under Article 5.1.3). If the Parties are unable to reach agreement on such terms and conditions, then, pursuant to Article 5.1.1 (Standard Option), Transmission Provider shall assume responsibility for the design, procurement and construction of all facilities other than Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades if the Interconnection Customer elects to exercise the Option to Build.

5.2 General Conditions Applicable to Option to Build. If Interconnection Customer assumes responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades,

(1) Interconnection Customer shall engineer, procure equipment, and construct Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by Transmission Provider;

(2) Interconnection Customer's engineering, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of law and Applicable Reliability Standards to which Transmission Provider would be subject in the engineering, procurement or construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(3) Transmission Provider shall review and approve the engineering design, equipment acceptance tests, and the construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(4) prior to commencement of construction, Interconnection Customer shall provide to Transmission Provider a schedule for construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades, and shall promptly respond to requests for information from Transmission Provider;

(5) at any time during construction, Transmission Provider shall have the right to gain unrestricted access to Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades and to conduct inspections of the same;

(6) at any time during construction, should any phase of the engineering, equipment procurement, or construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades not meet the standards and specifications provided by Transmission Provider, Interconnection Customer shall be obligated to remedy deficiencies in that portion of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(7) Interconnection Customer shall indemnify Transmission Provider for claims arising from Interconnection Customer's construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity;

(8) Interconnection Customer shall transfer control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to Transmission Provider;

(9) Unless Parties otherwise agree, Interconnection Customer shall transfer ownership of Transmission Provider's Interconnection Facilities and Stand-Alone Network Upgrades to Transmission Provider;

(10) Transmission Provider shall approve and accept for operation and maintenance Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2; and

(11) Interconnection Customer shall deliver to Transmission Provider "as-built" drawings, information, and any other documents that are reasonably required by Transmission Provider to assure that the Interconnection Facilities and Stand-Alone Network Upgrades are built to the standards and specifications required by Transmission Provider.

(12) If Interconnection Customer exercises the Option to Build pursuant to Article 5.1.3, Interconnection Customer shall pay Transmission Provider the agreed upon amount of $250,000 if the estimated Network Upgrades are under $7.5 million, $750,000 if the estimated Network Upgrades are between $7.5 million and $49.99 million, $1.5 million if the estimated Network Upgrades are between $50 million and $99.99 million, $2 million if the estimated Network Upgrades are between $100 million and $249.99 million and $2.75 million if the estimated Network Upgrades are $250 million or greater for Transmission Provider to execute the responsibilities enumerated to Transmission Provider under Article 5.2. Transmission Provider shall invoice Interconnection Customer for this total amount to be divided on a monthly basis pursuant to Article 12.

5.3 Liquidated Damages. The actual damages to Interconnection Customer, in the event Transmission Provider's Interconnection Facilities or Network Upgrades are not completed by the dates designated by Interconnection Customer and accepted by Transmission Provider pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by Transmission Provider to Interconnection Customer in the event that Transmission Provider does not complete any portion of Transmission Provider's Interconnection Facilities or Network Upgrades by the applicable dates, shall be an amount equal to ½ of 1 percent per day of the actual cost of Transmission Provider's Interconnection Facilities and Network Upgrades, in the aggregate, for which Transmission Provider has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of Transmission Provider's Interconnection Facilities and Network Upgrades for which Transmission Provider has assumed responsibility to design, procure, and construct. The foregoing payments will be made by Transmission Provider to Interconnection Customer as just compensation for the damages caused to Interconnection Customer, which actual damages are uncertain and impossible to

determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this LGIA. Liquidated damages, when the Parties agree to them, are the exclusive remedy for the Transmission Provider's failure to meet its schedule.

No liquidated damages shall be paid to Interconnection Customer if: (1) Interconnection Customer is not ready to commence use of Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for the Large Generating Facility's Trial Operation or to export power from the Large Generating Facility on the specified dates, unless Interconnection Customer would have been able to commence use of Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for Large Generating Facility's Trial Operation or to export power from the Large Generating Facility, but for Transmission Provider's delay; (2) Transmission Provider's failure to meet the specified dates is the result of the action or inaction of Interconnection Customer or any other Interconnection Customer who has entered into an LGIA with Transmission Provider or any cause beyond Transmission Provider's reasonable control or reasonable ability to cure; (3) the Interconnection Customer has assumed responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades; or (4) the Parties have otherwise agreed.

5.4 **Power System Stabilizers**. The Interconnection Customer shall procure, install, maintain and operate Power System Stabilizers in accordance with the guidelines and procedures established by the Applicable Reliability Council. Transmission Provider reserves the right to reasonably establish minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If the Large Generating Facility's Power System Stabilizers are removed from service or not capable of automatic operation, Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative. The requirements of this paragraph shall not apply to wind generators.

5.5 **Equipment Procurement**. If responsibility for construction of Transmission Provider's Interconnection Facilities or Network Upgrades is to be borne by Transmission Provider, then Transmission Provider shall commence design of Transmission Provider's Interconnection Facilities or Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

5.5.1 Transmission Provider has completed the Facilities Study pursuant to the Facilities Study Agreement;

5.5.2 Transmission Provider has received written authorization to proceed with design and procurement from Interconnection Customer by the date specified in Appendix B, Milestones; and

5.5.3 Interconnection Customer has provided security to Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.6 **Construction Commencement**. Transmission Provider shall commence construction of Transmission Provider's Interconnection Facilities and Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

5.6.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

5.6.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of Transmission Provider's Interconnection Facilities and Network Upgrades;

5.6.3 Transmission Provider has received written authorization to proceed with construction from Interconnection Customer by the date specified in Appendix B, Milestones; and

5.6.4 Interconnection Customer has provided security to Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.7 **Work Progress**. The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, Interconnection Customer determines that the completion of Transmission Provider's Interconnection Facilities will not be required until after the specified In-Service Date, Interconnection Customer will provide written notice to Transmission Provider of such later date upon which the completion of Transmission Provider's Interconnection Facilities will be required.

5.8 **Information Exchange**. As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Parties' Interconnection Facilities and compatibility of the Interconnection Facilities with Transmission Provider's Transmission System, and shall work diligently and in good faith to make any necessary design changes.

5.9 **Other Interconnection Options.**

5.9.1 **Limited Operation**. If any of Transmission Provider's Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Large Generating Facility, Transmission Provider shall, upon the request and at the expense of Interconnection Customer, perform operating studies on a timely basis to determine the extent to which the Large Generating Facility and Interconnection Customer's Interconnection Facilities may operate prior to the completion of Transmission Provider's Interconnection Facilities or Network Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this LGIA. Transmission Provider shall permit Interconnection Customer to operate the Large Generating Facility and Interconnection Customer's Interconnection Facilities in accordance with the results of such studies.

5.9.2 **Provisional Interconnection Service.** Upon the request of Interconnection Customer, and prior to completion of requisite Interconnection Facilities, Network Upgrades, Distribution Upgrades, or System Protection Facilities Transmission Provider may execute a Provisional Large Generator Interconnection Agreement or Interconnection Customer may request the filing of an unexecuted Provisional Large Generator Interconnection Agreement with the Interconnection Customer for

limited Interconnection Service at the discretion of Transmission Provider based upon an evaluation that will consider the results of available studies. Transmission Provider shall determine, through available studies or additional studies as necessary, whether stability, short circuit, thermal, and/or voltage issues would arise if Interconnection Customer interconnects without modifications to the Generating Facility or Transmission System. Transmission Provider shall determine whether any Interconnection Facilities, Network Upgrades, Distribution Upgrades, or System Protection Facilities that are necessary to meet the requirements of NERC, or any applicable Regional Entity for the interconnection of a new, modified and/or expanded Generating Facility are in place prior to the commencement of Interconnection Service from the Generating Facility. Where available studies indicate that such, Interconnection Facilities, Network Upgrades, Distribution Upgrades, and/or System Protection Facilities that are required for the interconnection of a new, modified and/or expanded Generating Facility are not currently in place, Transmission Provider will perform a study, at the Interconnection Customer's expense, to confirm the facilities that are required for Provisional Interconnection Service. The maximum permissible output of the Generating Facility in the Provisional Large Generator Interconnection Agreement shall be studied and updated if necessary on a quarterly basis at the Interconnection Customer's expense. Interconnection Customer assumes all risk and liabilities with respect to changes between the Provisional Large Generator Interconnection Agreement and the Large Generator Interconnection Agreement, including changes in output limits and Interconnection Facilities, Network Upgrades, Distribution Upgrades, and/or System Protection Facilities cost responsibilities.

5.10 Interconnection Customer's Interconnection Facilities ("ICIF"). Interconnection Customer shall, at its expense, design, procure, construct, own and install the ICIF, as set forth in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.10.1 Interconnection Customer's Interconnection Facility Specifications. Interconnection Customer shall submit initial specifications for the ICIF, including System Protection Facilities, to Transmission Provider at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Provider shall review such specifications to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of Transmission Provider and comment on such specifications within thirty (30) Calendar Days of Interconnection Customer's submission. All specifications provided hereunder shall be deemed confidential.

5.10.2 Transmission Provider's Review. Transmission Provider's review of Interconnection Customer's final specifications shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the ICIF. Interconnection Customer shall make such changes to the ICIF as may reasonably be required by Transmission Provider, in accordance with Good Utility Practice, to ensure that the ICIF are compatible with the

technical specifications, operational control, and safety requirements of Transmission Provider.

5.10.3 **ICIF Construction**. The ICIF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, Interconnection Customer shall deliver to Transmission Provider "as-built" drawings, information and documents for the ICIF, such as: a one-line diagram, a site plan showing the Large Generating Facility and the ICIF, plan and elevation drawings showing the layout of the ICIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with Interconnection Customer's step-up transformers, the facilities connecting the Large Generating Facility to the step-up transformers and the ICIF, and the impedances (determined by factory tests) for the associated step-up transformers and the Large Generating Facility. The Interconnection Customer shall provide Transmission Provider specifications for the excitation system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications, if applicable.

5.11 **Transmission Provider's Interconnection Facilities Construction**. Transmission Provider's Interconnection Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, Transmission Provider shall deliver to Interconnection Customer the following "as-built" drawings, information and documents for Transmission Provider's Interconnection Facilities [include appropriate drawings and relay diagrams].

Transmission Provider will obtain control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades upon completion of such facilities.

5.12 **Access Rights**. Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party") any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Large Generating Facility with the Transmission System; (ii) operate and maintain the Large Generating Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this LGIA. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

5.13 **Lands of Other Property Owners**. If any part of Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Provider or

Transmission Owner, Transmission Provider or Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades upon such property.

5.14 Permits. Transmission Provider or Transmission Owner and Interconnection Customer shall cooperate with each other in good faith in obtaining all permits, licenses, and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, Transmission Provider or Transmission Owner shall provide permitting assistance to Interconnection Customer comparable to that provided to Transmission Provider's own, or an Affiliate's generation.

5.15 Early Construction of Base Case Facilities. Interconnection Customer may request Transmission Provider to construct, and Transmission Provider shall construct, using Reasonable Efforts to accommodate Interconnection Customer's In-Service Date, all or any portion of any Network Upgrades required for Interconnection Customer to be interconnected to the Transmission System which are included in the Base Case of the Facilities Study for Interconnection Customer, and which also are required to be constructed for another Interconnection Customer, but where such construction is not scheduled to be completed in time to achieve Interconnection Customer's In-Service Date.

5.16 Suspension. Interconnection Customer reserves the right, upon written notice to Transmission Provider, to suspend at any time all work by Transmission Provider associated with the construction and installation of Transmission Provider's Interconnection Facilities and/or Network Upgrades required under this LGIA with the condition that Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and Transmission Provider's safety and reliability criteria. In such event, Interconnection Customer shall be responsible for all reasonable and necessary costs which Transmission Provider (i) has incurred pursuant to this LGIA prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Provider cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Provider shall obtain Interconnection Customer's authorization to do so.

Transmission Provider shall invoice Interconnection Customer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Interconnection Customer suspends work by Transmission Provider required under this LGIA pursuant to this Article 5.16, and has not requested Transmission Provider to recommence the work required under this LGIA on or before the expiration of three (3) years following commencement of such suspension, this LGIA shall be deemed terminated. The three-year period shall begin on the date the suspension is requested, or the date of the written notice to Transmission Provider, if no effective date is specified.

5.17 Taxes.

5.17.1 Interconnection Customer Payments Not Taxable. The Parties intend that all payments or property transfers made by Interconnection Customer to Transmission Provider for the installation of Transmission Provider's Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

5.17.2 Representations and Covenants. In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Interconnection Customer represents and covenants that (i) ownership of the electricity generated at the Large Generating Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to Transmission Provider for Transmission Provider's Interconnection Facilities will be capitalized by Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of Transmission Provider's Interconnection Facilities that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Large Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Provider's request, Interconnection Customer shall provide Transmission Provider with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Provider represents and covenants that the cost of Transmission Provider's Interconnection Facilities paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

5.17.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Transmission Provider. Notwithstanding Article 5.17.1, Interconnection Customer shall protect, indemnify and hold harmless Transmission Provider from the cost consequences of any current tax liability imposed against Transmission Provider as the result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA for Interconnection Facilities, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Provider.

Transmission Provider shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Interconnection Customer under this LGIA unless (i) Transmission Provider

has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Provider should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Provider to report payments or property as income subject to taxation; provided, however, that Transmission Provider may require Interconnection Customer to provide security for Interconnection Facilities, in a form reasonably acceptable to Transmission Provider (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 5.17. Interconnection Customer shall reimburse Transmission Provider for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten year testing period and the applicable statute of limitation, as it may be extended by Transmission Provider upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 **Tax Gross-Up Amount.** Interconnection Customer's liability for the cost consequences of any current tax liability under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Interconnection Customer will pay Transmission Provider, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Provider ("Current Taxes") on the excess of (a) the gross income realized by Transmission Provider as a result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA (without regard to any payments under this Article 5.17) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit Transmission Provider to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Provider's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Provider will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Provider's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Provider's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows: (Current Tax Rate x (Gross

Income Amount – Present Value of Tax Depreciation))/(1-Current Tax Rate). Interconnection Customer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.17.5 **Private Letter Ruling or Change or Clarification of Law**. At Interconnection Customer's request and expense, Transmission Provider shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Provider under this LGIA are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Provider and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

Transmission Provider shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Provider shall allow Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request.

5.17.6 **Subsequent Taxable Events**. If, within 10 years from the date on which the relevant Transmission Provider's Interconnection Facilities are placed in service, (i) Interconnection Customer Breaches the covenants contained in Article 5.17.2, (ii) a "disqualification event" occurs within the meaning of IRS Notice 88-129, or (iii) this LGIA terminates and Transmission Provider retains ownership of the Interconnection Facilities and Network Upgrades, Interconnection Customer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Transmission Provider, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90-60.

5.17.7 **Contests**. In the event any Governmental Authority determines that Transmission Provider's receipt of payments or property constitutes income that is subject to taxation, Transmission Provider shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Interconnection Customer's sole expense, Transmission Provider may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Interconnection Customer's written request and sole expense, Transmission Provider may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest,

abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Provider shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Transmission Provider may agree to a settlement either with Interconnection Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Provider, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Any settlement without Interconnection Customer's consent or such written advice will relieve Interconnection Customer from any obligation to indemnify Transmission Provider for the tax at issue in the contest.

5.17.8 **Refund.** In the event that (a) a private letter ruling is issued to Transmission Provider which holds that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Provider in good faith that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not taxable to Transmission Provider, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Transmission Provider are not subject to federal income tax, or (d) if Transmission Provider receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Transmission Provider pursuant to this LGIA, Transmission Provider shall promptly refund to Interconnection Customer the following:

(i) any payment made by Interconnection Customer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) interest on any amounts paid by Interconnection Customer to Transmission Provider for such taxes which Transmission Provider did not submit to the taxing authority, calculated in accordance with

the methodology set forth in FERC's regulations at 18 CFR §35.19a(a)(2)(iii) from the date payment was made by Interconnection Customer to the date Transmission Provider refunds such payment to Interconnection Customer, and

(iii) with respect to any such taxes paid by Transmission Provider, any refund or credit Transmission Provider receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Transmission Provider for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Provider to any Governmental Authority resulting from an offset or credit); provided, however, that Transmission Provider will remit such amount promptly to Interconnection Customer only after and to the extent that Transmission Provider has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to Transmission Provider's Interconnection Facilities.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

5.17.9 **Taxes Other Than Income Taxes**. Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Provider may appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which Interconnection Customer may be required to reimburse Transmission Provider under the terms of this LGIA. Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Provider.

5.17.10 **Transmission Owners Who Are Not Transmission Providers.** If Transmission Provider is not the same entity as the Transmission Owner, then (i) all references in this Article 5.17 to Transmission Provider shall be deemed also to refer to and to include the Transmission Owner, as appropriate, and (ii) this LGIA shall not become effective until such Transmission Owner shall have agreed in writing to assume all of the

duties and obligations of Transmission Provider under this Article 5.17 of this LGIA.

5.18 Tax Status. Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this LGIA is intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

5.19 Modification.

5.19.1 General. Either Party may undertake modifications to its facilities. If a Party plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party sufficient information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Interconnection Customer to submit an Interconnection Request, Transmission Provider shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the Transmission System, Transmission Provider's Interconnection Facilities or Network Upgrades necessitated by such Interconnection Customer modification and a good faith estimate of the costs thereof.

5.19.2 Standards. Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this LGIA, Applicable Reliability Standards and Good Utility Practice.

5.19.3 Modification Costs. Interconnection Customer shall not be directly assigned for the costs of any additions, modifications, or replacements that Transmission Provider makes to Transmission Provider's Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to Transmission Provider's Interconnection Facilities or the Transmission System, or to provide transmission service to a third party under Transmission Provider's Tariff. Interconnection Customer shall be responsible for the costs of any additions, modifications, or replacements to Interconnection Customer's Interconnection Facilities that may be necessary to maintain or upgrade such Interconnection Customer's Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

Article 6. Testing and Inspection

6.1 **Pre-Commercial Operation Date Testing and Modifications**. Prior to the Commercial Operation Date, Transmission Provider shall test Transmission Provider's Interconnection Facilities and Network Upgrades and Interconnection Customer shall test the Large Generating Facility and Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications. Interconnection Customer shall generate test energy at the Large Generating Facility only if it has arranged for the delivery of such test energy.

6.2 **Post-Commercial Operation Date Testing and Modifications**. Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Large Generating Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

6.3 **Right to Observe Testing**. Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.

6.4 **Right to Inspect**. Each Party shall have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be Confidential Information and treated pursuant to Article 22 of this LGIA.

Article 7. Metering

7.1 **General.** Each Party shall comply with the Applicable Reliability Council requirements. Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection prior to any operation of the Large Generating Facility and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Large Generating Facility shall be measured at or, at Transmission Provider's option, compensated to, the Point of Interconnection. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Interconnection Customer upon request. Interconnection Customer shall bear all reasonable documented

costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

7.2 **Check Meters**. Interconnection Customer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Provider's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this LGIA, except as provided in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Provider or its designee. The installation, operation and maintenance thereof shall be performed entirely by Interconnection Customer in accordance with Good Utility Practice.

7.3 **Standards**. Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards.

7.4 **Testing of Metering Equipment**. Transmission Provider shall inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Interconnection Customer, Transmission Provider shall, at Interconnection Customer's expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Interconnection Customer may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Interconnection Customer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Transmission Provider's failure to maintain, then Transmission Provider shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Interconnection Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

7.5 **Metering Data**. At Interconnection Customer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Interconnection Customer. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Large Generating Facility to the Point of Interconnection.

Article 8. Communications

8.1 **Interconnection Customer Obligations**. Interconnection Customer shall maintain satisfactory operating communications with Transmission Provider's Transmission System dispatcher or representative designated by Transmission Provider. Interconnection Customer shall provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Interconnection Customer

shall also provide the dedicated data circuit(s) necessary to provide Interconnection Customer data to Transmission Provider as set forth in Appendix D, Security Arrangements Details. The data circuit(s) shall extend from the Large Generating Facility to the location(s) specified by Transmission Provider. Any required maintenance of such communications equipment shall be performed by Interconnection Customer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

8.2 **Remote Terminal Unit**. Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by Interconnection Customer, or by Transmission Provider at Interconnection Customer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Provider. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

8.3 **No Annexation.** Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

8.4 **Provision of Data from a Variable Energy Resource.** The Interconnection Customer whose Generating Facility is a Variable Energy Resource shall provide meteorological and forced outage data to the Transmission Provider to the extent necessary for the Transmission Provider’s development and deployment of power production forecasts for that class of Variable Energy Resources. The Interconnection Customer with a Variable Energy Resource having wind as the energy source, at a minimum, will be required to provide the Transmission Provider with site-specific meteorological data including: temperature, wind speed, wind direction, and atmospheric pressure. The Interconnection Customer with a Variable Energy Resource having solar as the energy source, at a minimum, will be required to provide the Transmission Provider with site-specific meteorological data including: temperature, atmospheric pressure, and irradiance. The Transmission Provider and Interconnection Customer whose Generating Facility is a Variable Energy Resource shall mutually agree to any additional meteorological data that are required for the development and deployment of a power production forecast. The Interconnection Customer whose Generating Facility is a Variable Energy Resource also shall submit data to the Transmission Provider regarding all forced outages to the extent necessary for the Transmission Provider’s development and deployment of power production forecasts for that class of Variable Energy Resources. The exact specifications of the meteorological and forced outage data to be provided by the Interconnection Customer to the Transmission Provider, including the frequency and

timing of data submittals, shall be made taking into account the size and configuration of the Variable Energy Resource, its characteristics, location, and its importance in maintaining generation resource adequacy and transmission system reliability in its area. All requirements for meteorological and forced outage data must be commensurate with the power production forecasting employed by the Transmission Provider. Such requirements for meteorological and forced outage data are set forth in Appendix C, Interconnection Details, of this LGIA, as they may change from time to time.

Article 9. Operations

9.1 General. Each Party shall comply with the Applicable Reliability Council requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

9.2 Control Area Notification. At least three months before Initial Synchronization Date, Interconnection Customer shall notify Transmission Provider in writing of the Control Area in which the Large Generating Facility will be located. If Interconnection Customer elects to locate the Large Generating Facility in a Control Area other than the Control Area in which the Large Generating Facility is physically located, and if permitted to do so by the relevant transmission tariffs, all necessary arrangements, including but not limited to those set forth in Article 7 and Article 8 of this LGIA, and remote Control Area generator interchange agreements, if applicable, and the appropriate measures under such agreements, shall be executed and implemented prior to the placement of the Large Generating Facility in the other Control Area.

9.3 Transmission Provider Obligations. Transmission Provider shall cause the Transmission System and Transmission Provider's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this LGIA. Transmission Provider may provide operating instructions to Interconnection Customer consistent with this LGIA and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

9.4 Interconnection Customer Obligations. Interconnection Customer shall at its own expense operate, maintain and control the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA. Interconnection Customer shall operate the Large Generating Facility and Interconnection Customer's Interconnection Facilities in accordance with all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this LGIA. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this LGIA.

9.5 Start-Up and Synchronization. Consistent with the Parties' mutually acceptable procedures, Interconnection Customer is responsible for the proper synchronization of the Large Generating Facility to Transmission Provider's Transmission System.

9.6 Reactive Power and Primary Frequency Response.

9.6.1 Power Factor Design Criteria.

9.6.1.1 Synchronous Generation. Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the Transmission Provider has established different requirements that apply to all synchronous generators in the Control Area on a comparable basis.

9.6.1.2 Non-Synchronous Generation. Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the high-side of the generator substation at a power factor within the range of 0.95 leading to 0.95 lagging, unless the Transmission Provider has established a different power factor range that applies to all non-synchronous generators in the Control Area on a comparable basis. This power factor range standard shall be dynamic and can be met using, for example, power electronics designed to supply this level of reactive capability (taking into account any limitations due to voltage level, real power output, etc.) or fixed and switched capacitors, or a combination of the two. This requirement shall only apply to newly interconnecting non-synchronous generators that have not yet executed a Facilities Study Agreement as of the effective date of the Final Rule establishing this requirement (Order No. 827).

9.6.2 Voltage Schedules. Once Interconnection Customer has synchronized the Large Generating Facility with the Transmission System, Transmission Provider shall require Interconnection Customer to operate the Large Generating Facility to produce or absorb reactive power within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). Transmission Provider's voltage schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Interconnection Customer with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Transmission System. Interconnection Customer shall operate the Large Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). If Interconnection Customer is unable to maintain the specified voltage or power factor, it shall promptly notify the System Operator.

9.6.2.1 Voltage Regulators. Whenever the Large Generating Facility is operated in parallel with the Transmission System and voltage regulators are capable of operation, Interconnection Customer shall operate the Large Generating Facility with its voltage regulators in automatic operation. If the Large Generating Facility's voltage regulators are not capable of such automatic operation, Interconnection Customer shall immediately notify Transmission

Provider's system operator, or its designated representative, and ensure that such Large Generating Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits. Interconnection Customer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis.

9.6.3 Payment for Reactive Power. Transmission Provider is required to pay Interconnection Customer for reactive power that Interconnection Customer provides or absorbs from the Large Generating Facility when Transmission Provider requests Interconnection Customer to operate its Large Generating Facility outside the range specified in Article 9.6.1, provided that if Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay Interconnection Customer. Payments shall be pursuant to Article 11.6 or such other agreement to which the Parties have otherwise agreed.

9.6.4 Primary Frequency Response. Interconnection Customer shall ensure the primary frequency response capability of its Large Generating Facility by installing, maintaining, and operating a functioning governor or equivalent controls. The term “functioning governor or equivalent controls” as used herein shall mean the required hardware and/or software that provides frequency responsive real power control with the ability to sense changes in system frequency and autonomously adjust the Large Generating Facility’s real power output in accordance with the droop and deadband parameters and in the direction needed to correct frequency deviations. Interconnection Customer is required to install a governor or equivalent controls with the capability of operating: (1) with a maximum 5 percent droop and +/- 0.036 Hz deadband; or (2) in accordance with the relevant droop, deadband, and timely and sustained response settings from an approved NERC Reliability Standard providing for equivalent or more stringent parameters. The droop characteristic shall be: (1) based on the nameplate capacity of the Large Generating Facility, and shall be linear in the range of frequencies between 59 to 61 Hz that are outside of the deadband parameter; or (2) based on approved NERC Reliability Standard providing for an equivalent or more stringent parameter. The deadband parameter shall be: the range of frequencies above and below nominal (60 Hz) in which the governor or equivalent controls is not expected to adjust the Large Generating Facility’s real power output in response to frequency deviations. The deadband shall be implemented: (1) without a step to the droop curve, that is, once the frequency deviation exceeds the deadband parameter, the expected change in the Large Generating Facility’s real power output in response to frequency deviations shall start from zero and then increase (for under-frequency deviations) or decrease (for over-frequency deviations) linearly in proportion to the magnitude of the frequency deviation; or (2) in accordance with an approved NERC Reliability Standard providing for an

equivalent or more stringent parameter. Interconnection Customer shall notify Transmission Provider that the primary frequency response capability of the Large Generating Facility has been tested and confirmed during commissioning. Once Interconnection Customer has synchronized the Large Generating Facility with the Transmission System, Interconnection Customer shall operate the Large Generating Facility consistent with the provisions specified in Sections 9.6.4.1 and 9.6.4.2 of this Agreement. The primary frequency response requirements contained herein shall apply to both synchronous and non-synchronous Large Generating Facilities.

9.6.4.1 **Governor or Equivalent Controls.** Whenever the Large Generating Facility is operated in parallel with the Transmission System, Interconnection Customer shall operate the Large Generating Facility with its governor or equivalent controls in service and responsive to frequency. Interconnection Customer shall: (1) in coordination with Transmission Provider and/or the relevant balancing authority, set the deadband parameter to: (1) a maximum of +/-0.036 Hz and set the droop parameter to a maximum of 5 percent; or (2) implement the relevant droop and deadband settings from an approved NERC Reliability Standard that provides for equivalent or more stringent parameters. Interconnection Customer shall be required to provide the status and settings of the governor or equivalent controls to Transmission Provider and/or the relevant balancing authority upon request. If Interconnection Customer needs to operate the Large Generating Facility with its governor or equivalent controls not in service, Interconnection Customer shall immediately notify Transmission Provider and the relevant balancing authority, and provide both with the following information: (1) the operating status of the governor or equivalent controls (i.e., whether it is currently out of service or when it will be taken out of service); (2) the reasons for removing the governor or equivalent controls from service; and (3) a reasonable estimate of when the governor or equivalent controls will be returned to service. Interconnection Customer shall make Reasonable Efforts to return its governor or equivalent controls into service as soon as practicable. Interconnection Customer shall make Reasonable Efforts to keep outages of the Large Generating Facility's governor or equivalent controls to a minimum whenever the Large Generating Facility is operated in parallel with the Transmission System.

9.6.4.2 **Timely and Sustained Response.** Interconnection Customer shall ensure that the Large Generating Facility's real power response to sustained frequency deviations outside of the deadband setting is automatically provided and shall begin immediately after frequency deviates outside of the deadband, and to the extent the Large Generating Facility has operating capability in the direction needed to correct the frequency deviation. Interconnection Customer shall not block or otherwise inhibit the ability of the governor or equivalent controls to respond and shall ensure that the response is not inhibited, except under certain operational constraints including,

but not limited to, ambient temperature limitations, physical energy limitations, outages of mechanical equipment, or regulatory requirements. The Large Generating Facility shall sustain the real power response at least until system frequency returns to a value within the deadband setting of the governor or equivalent controls. A Commission-approved Reliability Standard with equivalent or more stringent requirements shall supersede the above requirements.

9.6.4.3 **Exemptions.** Large Generating Facilities that are regulated by the United States Nuclear Regulatory Commission shall be exempt from Sections 9.6.4, 9.6.4.1, and 9.6.4.2 of this Agreement. Large Generating Facilities that are behind the meter generation that is sized-to-load (i.e., the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirements of its host facility) shall be required to install primary frequency response capability in accordance with the droop and deadband capability requirements specified in Section 9.6.4, but shall be otherwise exempt from the operating requirements in Sections 9.6.4, 9.6.4.1, 9.6.4.2, and **9.6.4.4** of this Agreement.

9.6.4.4 **Electric Storage Resources.** Interconnection Customer interconnecting an electric storage resource shall establish an operating range in Appendix C of its LGIA that specifies a minimum state of charge and a maximum state of charge between which the electric storage resource will be required to provide primary frequency response consistent with the conditions set forth in Sections 9.6.4, 9.6.4.1, 9.6.4.2, and 9.6.4.3 of this Agreement. Appendix C shall specify whether the operating range is static or dynamic, and shall consider: (1) the expected magnitude of frequency deviations in the interconnection; (2) the expected duration that system frequency will remain outside of the deadband parameter in the interconnection; (3) the expected incidence of frequency deviations outside of the deadband parameter in the interconnection; (4) the physical capabilities of the electric storage resource; (5) operational limitations of the electric storage resource due to manufacturer specifications; and (6) any other relevant factors agreed to by Transmission Provider and Interconnection Customer, and in consultation with the relevant transmission owner or balancing authority as appropriate. If the operating range is dynamic, then Appendix C must establish how frequently the operating range will be reevaluated and the factors that may be considered during its reevaluation.

Interconnection Customer's electric storage resource is required to provide timely and sustained primary frequency response consistent with Section 9.6.4.2 of this Agreement when it is online and dispatched to inject electricity to the Transmission System and/or receive electricity from the Transmission System. This

excludes circumstances when the electric storage resource is not dispatched to inject electricity to the Transmission System and/or dispatched to receive electricity from the Transmission System. If Interconnection Customer's electric storage resource is charging at the time of a frequency deviation outside of its deadband parameter, it is to increase (for over-frequency deviations) or decrease (for under-frequency deviations) the rate at which it is charging in accordance with its droop parameter. Interconnection Customer's electric storage resource is not required to change from charging to discharging, or vice versa, unless the response necessitated by the droop and deadband settings requires it to do so and it is technically capable of making such a transition.

9.7 Outages and Interruptions.

9.7.1 Outages.

9.7.1.1 **Outage Authority and Coordination**. Each Party may in accordance with Good Utility Practice in coordination with the other Party remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to the Parties. In all circumstances, any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

9.7.1.2 **Outage Schedules.** Transmission Provider shall post scheduled outages of its transmission facilities on the OASIS. Interconnection Customer shall submit its planned maintenance schedules for the Large Generating Facility to Transmission Provider for a minimum of a rolling twenty-four month period. Interconnection Customer shall update its planned maintenance schedules as necessary. Transmission Provider may request Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate Interconnection Customer for any additional direct costs that Interconnection Customer incurs as a result of having to reschedule maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost Interconnection Customer would have incurred absent Transmission Provider's request to reschedule maintenance. Interconnection Customer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, Interconnection Customer had modified its schedule of maintenance activities.

9.7.1.3 **Outage Restoration**. If an outage on a Party's Interconnection Facilities or Network Upgrades adversely affects the other Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Party, to the extent such information is known, information on the nature of the Emergency Condition, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

9.7.2 **Interruption of Service**. If required by Good Utility Practice to do so, Transmission Provider may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.7.2:

9.7.2.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.7.2.2 Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all generating facilities directly connected to the Transmission System;

9.7.2.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, Transmission Provider shall notify Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.7.2.4 Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notice, Transmission Provider shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration. Transmission Provider shall coordinate with Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to Interconnection Customer and Transmission Provider;

9.7.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Interconnection Facilities, and the Transmission System to their

normal operating state, consistent with system conditions and Good Utility Practice.

9.7.3 Under-Frequency and Over Frequency Conditions. The Transmission System is designed to automatically activate a load-shed program as required by the Applicable Reliability Council in the event of an under-frequency system disturbance. Interconnection Customer shall implement under-frequency and over-frequency relay set points for the Large Generating Facility as required by the Applicable Reliability Council to ensure "ride through" capability of the Transmission System. Large Generating Facility response to frequency deviations of pre-determined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with Transmission Provider in accordance with Good Utility Practice. The term "ride through" as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the Transmission System during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice.

9.7.4 System Protection and Other Control Requirements.

9.7.4.1 **System Protection Facilities**. Interconnection Customer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Transmission Provider shall install at Interconnection Customer's expense any System Protection Facilities that may be required on Transmission Provider's Interconnection Facilities or the Transmission System as a result of the interconnection of the Large Generating Facility and Interconnection Customer's Interconnection Facilities.

9.7.4.2 Each Party's protection facilities shall be designed and coordinated with other systems in accordance with Good Utility Practice.

9.7.4.3 Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice.

9.7.4.4 Each Party's protective relay design shall incorporate the necessary test switches to perform the tests required in Article 6. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of Interconnection Customer's units.

9.7.4.5 Each Party will test, operate and maintain System Protection Facilities in accordance with Good Utility Practice.

9.7.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation Date, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and

following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

9.7.5 Requirements for Protection. In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Provider's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Large Generating Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Interconnection Customer shall be responsible for protection of the Large Generating Facility and Interconnection Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Interconnection Customer shall be solely responsible to disconnect the Large Generating Facility and Interconnection Customer's other equipment if conditions on the Transmission System could adversely affect the Large Generating Facility.

9.7.6 Power Quality. Neither Party's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry standard, shall control.

9.8 Switching and Tagging Rules. Each Party shall provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

9.9 Use of Interconnection Facilities by Third Parties.

9.9.1 Purpose of Interconnection Facilities. Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the Transmission System and shall be used for no other purpose.

9.9.2 Third Party Users. If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use Transmission Provider's Interconnection Facilities,

or any part thereof, Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between Interconnection Customer and any third party users based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

9.10 Disturbance Analysis Data Exchange. The Parties will cooperate with one another in the analysis of disturbances to either the Large Generating Facility or Transmission Provider's Transmission System by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

Article 10. Maintenance

10.1 Transmission Provider Obligations. Transmission Provider shall maintain the Transmission System and Transmission Provider's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

10.2 Interconnection Customer Obligations. Interconnection Customer shall maintain the Large Generating Facility and Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

10.3 Coordination. The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Large Generating Facility and the Interconnection Facilities.

10.4 Secondary Systems. Each Party shall cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

10.5 Operating and Maintenance Expenses. Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer's

Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider's Interconnection Facilities.

Article 11. Performance Obligation

11.1 Interconnection Customer Interconnection Facilities. Interconnection Customer shall design, procure, construct, install, own and/or control Interconnection Customer Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at its sole expense.

11.2 Transmission Provider's Interconnection Facilities. Transmission Provider or Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Provider's Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at the sole expense of the Interconnection Customer.

11.3 Network Upgrades and Distribution Upgrades. Transmission Provider or Transmission Owner shall design, procure, construct, install, and own the Network Upgrades and Distribution Upgrades described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades. The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades. Unless Transmission Provider or Transmission Owner elects to fund the capital for the Network Upgrades, they shall be solely funded by Interconnection Customer.

11.4 Transmission Credits.

11.4.1 Repayment of Amounts Advanced for Network Upgrades. Interconnection Customer shall be entitled to a cash repayment, equal to the total amount paid to Transmission Provider and Affected System Operator, if any, for the Network Upgrades, including any tax gross-up or other tax-related payments associated with Network Upgrades, and not refunded to Interconnection Customer pursuant to Article 5.17.8 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Large Generating Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which the Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. Interconnection Customer may assign such repayment rights to any person.

Notwithstanding the foregoing, Interconnection Customer, Transmission Provider, and Affected System Operator may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Provider and Affected System Operator take one of the following actions no later than five years from the Commercial Operation Date: (1) return to Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Provider

or Affected System Operator will continue to provide payments to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.

If the Large Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, Transmission Provider and Affected System Operator shall at that time reimburse Interconnection Customer for the amounts advanced for the Network Upgrades. Before any such reimbursement can occur, the Interconnection Customer, or the entity that ultimately constructs the Generating Facility, if different, is responsible for identifying the entity to which reimbursement must be made.

11.4.2 **Special Provisions for Affected Systems**. Unless Transmission Provider provides, under the LGIA, for the repayment of amounts advanced to Affected System Operator for Network Upgrades, Interconnection Customer and Affected System Operator shall enter into an agreement that provides for such repayment. The agreement shall specify the terms governing payments to be made by Interconnection Customer to the Affected System Operator as well as the repayment by the Affected System Operator.

11.4.3 Notwithstanding any other provision of this LGIA, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the Large Generating Facility.

11.5 **Provision of Security**. At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades, Interconnection Customer shall provide Transmission Provider, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable portion of Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider for these purposes.

In addition:

11.5.1 The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

11.5.2 The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.5.3 The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.6 Interconnection Customer Compensation. If Transmission Provider requests or directs Interconnection Customer to provide a service pursuant to Articles 9.6.3 (Payment for Reactive Power), or 13.5.1 of this LGIA, Transmission Provider shall compensate Interconnection Customer in accordance with Interconnection Customer's applicable rate schedule then in effect unless the provision of such service(s) is subject to an RTO or ISO FERC-approved rate schedule. Interconnection Customer shall serve Transmission Provider or RTO or ISO with any filing of a proposed rate schedule at the time of such filing with FERC. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb any Reactive Power under this LGIA, Transmission Provider agrees to compensate Interconnection Customer in such amount as would have been due Interconnection Customer had the rate schedule been in effect at the time service commenced; provided, however, that such rate schedule must be filed at FERC or other appropriate Governmental Authority within sixty (60) Calendar Days of the commencement of service.

11.6.1 Interconnection Customer Compensation for Actions During Emergency Condition. Transmission Provider or RTO or ISO shall compensate Interconnection Customer for its provision of real and reactive power and other Emergency Condition services that Interconnection Customer provides to support the Transmission System during an Emergency Condition in accordance with Article 11.6.

Article 12. Invoice

12.1 General. Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this LGIA, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

12.2 Final Invoice. Within six months after completion of the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades, Transmission Provider shall provide an invoice of the final cost of the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades and shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund to Interconnection Customer any amount by which the actual

payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

12.3 **Payment**. Invoices shall be rendered to the paying Party at the address specified in Appendix F. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by either Party will not constitute a waiver of any rights or claims either Party may have under this LGIA.

12.4 **Disputes**. In the event of a billing dispute between Transmission Provider and Interconnection Customer, Transmission Provider shall continue to provide Interconnection Service under this LGIA as long as Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements for continuation of service, then Transmission Provider may provide notice to Interconnection Customer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's regulations at 18 CFR § 35.19a(a)(2)(iii).

Article 13. Emergencies

13.1 **Definition**. "Emergency Condition" shall mean a condition or situation: (i) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, Transmission Provider's Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (iii) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to**,** the Large Generating Facility or Interconnection Customer's Interconnection Facilities' System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by this LGIA to possess black start capability.

13.2 **Obligations**. Each Party shall comply with the Emergency Condition procedures of the applicable ISO/RTO, NERC, the Applicable Reliability Council, Applicable Laws and Regulations, and any emergency procedures agreed to by the Joint Operating Committee.

13.3 **Notice.** Transmission Provider shall notify Interconnection Customer promptly when it becomes aware of an Emergency Condition that affects Transmission Provider's Interconnection Facilities or the Transmission System that may reasonably be expected to affect Interconnection Customer's operation of the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Interconnection Customer shall notify Transmission Provider promptly when it becomes aware of an Emergency Condition that affects the Large Generating Facility or Interconnection Customer's Interconnection Facilities that may reasonably be expected to affect the Transmission

System or Transmission Provider's Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Interconnection Customer's or Transmission Provider's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

13.4 Immediate Action. Unless, in Interconnection Customer's reasonable judgment, immediate action is required, Interconnection Customer shall obtain the consent of Transmission Provider, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Large Generating Facility or Interconnection Customer's Interconnection Facilities in response to an Emergency Condition either declared by Transmission Provider or otherwise regarding the Transmission System.

13.5 Transmission Provider Authority.

13.5.1 General. Transmission Provider may take whatever actions or inactions with regard to the Transmission System or Transmission Provider's Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission System or Transmission Provider's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

Transmission Provider shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Large Generating Facility or Interconnection Customer's Interconnection Facilities. Transmission Provider may, on the basis of technical considerations, require the Large Generating Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Interconnection Customer to shut-down, start-up, increase or decrease the real or reactive power output of the Large Generating Facility; implementing a reduction or disconnection pursuant to Article 13.5.2; directing Interconnection Customer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Large Generating Facility and Interconnection Customer's Interconnection Facilities. Interconnection Customer shall comply with all of Transmission Provider's operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer's design limitations of the Large Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

13.5.2 Reduction and Disconnection. Transmission Provider may reduce Interconnection Service or disconnect the Large Generating Facility or Interconnection Customer's Interconnection Facilities, when such, reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of Transmission Provider pursuant to Transmission Provider's Tariff. When Transmission Provider can schedule the reduction or disconnection in advance, Transmission Provider shall notify

Interconnection Customer of the reasons, timing and expected duration of the reduction or disconnection. Transmission Provider shall coordinate with Interconnection Customer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to Interconnection Customer and Transmission Provider. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Large Generating Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.6 Interconnection Customer Authority. Consistent with Good Utility Practice and the LGIA and the LGIP, Interconnection Customer may take actions or inactions with regard to the Large Generating Facility or Interconnection Customer's Interconnection Facilities during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Large Generating Facility or Interconnection Customer's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Interconnection Customer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and Transmission Provider's Interconnection Facilities. Transmission Provider shall use Reasonable Efforts to assist Interconnection Customer in such actions.

13.7 Limited Liability. Except as otherwise provided in Article 11.6.1 of this LGIA, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

Article 14. Regulatory Requirements and Governing Law

14.1 Regulatory Requirements. Each Party's obligations under this LGIA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this LGIA shall require Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act, the Public Utility Holding Company Act of 1935, as amended, or the Public Utility Regulatory Policies Act of 1978.

14.2 Governing Law.

14.2.1 The validity, interpretation and performance of this LGIA and each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of law principles.

14.2.2 This LGIA is subject to all Applicable Laws and Regulations.

14.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

Article 15. Notices

15.1 General. Unless otherwise provided in this LGIA, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F, Addresses for Delivery of Notices and Billings.

Either Party may change the notice information in this LGIA by giving five (5) Business Days written notice prior to the effective date of the change.

15.2 Billings and Payments. Billings and payments shall be sent to the addresses set out in Appendix F.

15.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by a Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out in Appendix F.

15.4 Operations and Maintenance Notice. Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

Article 16. Force Majeure

16.1 Force Majeure.

16.1.1 Economic hardship is not considered a Force Majeure event.

16.1.2 Neither Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

Article 17. Default

17.1 Default

17.1.1 **General.** No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this LGIA or the result of an act of omission of the other Party. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party. Except as provided in Article 17.1.2, the breaching Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

17.1.2 **Right to Terminate**. If a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the non-breaching Party shall have the right to declare a Default and terminate this LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this LGIA, to recover from the breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this LGIA.

Article 18. Indemnity, Consequential Damages and Insurance

18.1 **Indemnity**. The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this LGIA on behalf of the Indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

18.1.1 **Indemnified Person**. If an Indemnified Person is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1, to assume the defense of such claim, such Indemnified Person may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

18.1.2 **Indemnifying Party**. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article 18, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

18.1.3 **Indemnity Procedures**. Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative

or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

18.1.4 **Indemnity Limitations.** To the extent, if at all, Section 56-7-1 NMSA 1978, *et seq.* (2005), as amended, is applicable to any indemnity provision in this Agreement, any agreement to indemnify, hold harmless, insure (including a requirement to name the indemnified party as an additional insured) or defend another party, including the other party's employees or agents, contained in this Agreement will not extend to liability, claims, damages losses or expenses, including attorney's fees, arising out of bodily injury to persons or damage to property resulting from, in whole or in part, the negligence, act or omission of any indemnitee, its officers, employees or agents.

18.2 **Consequential Damages**. Other than the Liquidated Damages heretofore described, in no event shall either Party be liable under any provision of this LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in

whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

18.3 **Insurance**. Each Party shall, at its own expense, maintain in force throughout the period of this LGIA, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the state where the Point of Interconnection is located:

18.3.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Interconnection is located.

18.3.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars ($1,000,000) per occurrence/One Million Dollars ($1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

18.3.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily injury, including death, and property damage.

18.3.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence/Twenty Million Dollars ($20,000,000) aggregate.

18.3.5 The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this LGIA against the Other Party Group and provide thirty (30) Calendar Days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

18.3.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply

to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

18.3.7 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this LGIA, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

18.3.8 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this LGIA.

18.3.9 Within ten (10) days following execution of this LGIA, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, each Party shall provide certification of all insurance required in this LGIA, executed by each insurer or by an authorized representative of each insurer.

18.3.10 In addition to the foregoing, each Party may self-insure to meet the minimum insurance requirements of Articles 18.3.2 through 18.3.8 to the extent it maintains a self-insurance program; provided that, such Party's self-insurance program meets the minimum insurance requirements of Articles 18.3.2 through 18.3.8. In the event that a Party is permitted to self-insure pursuant to this article, it shall certify to the other Party with a letter of self-insurance that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 18.3.9.

18.3.11 The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this LGIA.

Article 19. Assignment

19.1 **Assignment**. This LGIA may be assigned by either Party only with the written consent of the other; provided that either Party may assign this LGIA without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this LGIA; and provided further that Interconnection Customer shall have the right to assign this LGIA, without the consent of Transmission Provider, for collateral security purposes to aid in providing financing for the Large Generating Facility, provided that Interconnection Customer will promptly notify Transmission Provider of any such assignment. Any financing arrangement entered into by Interconnection Customer

pursuant to this article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s), including providing the Transmission Provider with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted assignment that violates this article is void and ineffective. Any assignment under this LGIA shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

Article 20. Severability

20.1 Severability. If any provision in this LGIA is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this LGIA; provided that if Interconnection Customer (or any third party, but only if such third party is not acting at the direction of Transmission Provider) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by the Standard Option (Article 5.1.1).

Article 21. Comparability

21.1 Comparability. The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

Article 22. Confidentiality

22.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article 22 warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

22.1.1 Term. During the term of this LGIA, and for a period of three (3) years after the expiration or termination of this LGIA, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

22.1.2 **Scope**. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this LGIA; or (6) is required, in accordance with Article 22.1.7 of the LGIA, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

22.1.3 **Release of Confidential Information**. Neither Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this LGIA, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

22.1.4 **Rights**. Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

22.1.5 **No Warranties**. By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

22.1.6 **Standard of Care**. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this LGIA or its regulatory requirements.

22.1.7 **Order of Disclosure**. If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

22.1.8 **Termination of Agreement**. Upon termination of this LGIA for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

22.1.9 **Remedies**. The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

22.1.10 **Disclosure to FERC, its Staff, or a State**. Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 CFR Section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this LGIA, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this LGIA prior to the release of the Confidential Information to FERC or its staff. The Party shall

notify the other Party to the LGIA when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

22.1.11 Subject to the exception in Article 22.1.10, any information that a Party claims is competitively sensitive, commercial or financial information under this LGIA ("Confidential Information") shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this LGIA or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

Article 23. Environmental Releases

23.1 Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Large Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

Article 24. Information Requirements

24.1 **Information Acquisition**. Transmission Provider and Interconnection Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Reliability Standards.

24.2 **Information Submission by Transmission Provider**. The initial information submission by Transmission Provider shall occur no later than one hundred eighty (180) Calendar

Days prior to Trial Operation and shall include Transmission System information necessary to allow Interconnection Customer to select equipment and meet any system protection and stability requirements, unless otherwise agreed to by the Parties. On a monthly basis Transmission Provider shall provide Interconnection Customer a status report on the construction and installation of Transmission Provider's Interconnection Facilities and Network Upgrades, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

24.3 Updated Information Submission by Interconnection Customer. The updated information submission by Interconnection Customer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Interconnection Customer shall submit a completed copy of the Large Generating Facility data requirements contained in Appendix 1 to the LGIP. It shall also include any additional information provided to Transmission Provider for the Feasibility and Facilities Study. Information in this submission shall be the most current Large Generating Facility design or expected performance data. Information submitted for stability models shall be compatible with Transmission Provider standard models. If there is no compatible model, Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If Interconnection Customer's data is materially different from what was originally provided to Transmission Provider pursuant to the Interconnection Study Agreement between Transmission Provider and Interconnection Customer, then Transmission Provider will conduct appropriate studies to determine the impact on Transmission Provider Transmission System based on the actual data submitted pursuant to this Article 24.3. The Interconnection Customer shall not begin Trial Operation until such studies are completed.

24.4 Information Supplementation. Prior to the Operation Date, the Parties shall supplement their information submissions described above in this Article 24 with any and all "as-built" Large Generating Facility information or "as-tested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Interconnection Customer shall conduct tests on the Large Generating Facility as required by Good Utility Practice such as an open circuit "step voltage" test on the Large Generating Facility to verify proper operation of the Large Generating Facility's automatic voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent change in Large Generating Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Interconnection Customer shall provide validated test recordings showing the responses of Large Generating Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Large Generating Facility's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Large Generating Facility terminal or field voltages is provided. Large Generating Facility testing shall be conducted and results provided to Transmission Provider for each individual generating unit in a station.

Subsequent to the Operation Date, Interconnection Customer shall provide Transmission Provider any information changes due to equipment replacement, repair, or adjustment. Transmission Provider shall provide Interconnection Customer any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Transmission Provider-owned substation that may affect Interconnection Customer's Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

Article 25. Information Access and Audit Rights

25.1 Information Access. Each Party (the "disclosing Party") shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this LGIA; and (ii) carry out its obligations and responsibilities under this LGIA. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this LGIA.

25.2 Reporting of Non-Force Majeure Events. Each Party (the "notifying Party") shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this LGIA for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this LGIA.

25.3 Audit Rights. Subject to the requirements of confidentiality under Article 22 of this LGIA, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this LGIA. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, Transmission Provider's efforts to allocate responsibility for the provision of reactive support to the Transmission System, Transmission Provider's efforts to allocate responsibility for interruption or reduction of generation on the Transmission System, and each Party's actions in an Emergency Condition. Any audit authorized by this article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this LGIA. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

25.4 Audit Rights Periods.

25.4.1 Audit Rights Period for Construction-Related Accounts and Records. Accounts and records related to the design, engineering, procurement, and construction of Transmission Provider's Interconnection Facilities and Network Upgrades shall be subject to audit for a period of twenty-four

months following Transmission Provider's issuance of a final invoice in accordance with Article 12.2.

25.4.2 **Audit Rights Period for All Other Accounts and Records**. Accounts and records related to either Party's performance or satisfaction of all obligations under this LGIA other than those described in Article 25.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

25.5 **Audit Results**. If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

Article 26. Subcontractors

26.1 **General**. Nothing in this LGIA shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this LGIA; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this LGIA in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

26.2 **Responsibility of Principal**. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this LGIA. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall Transmission Provider be liable for the actions or inactions of Interconnection Customer or its subcontractors with respect to obligations of Interconnection Customer under Article 5 of this LGIA. Any applicable obligation imposed by this LGIA upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

26.3 **No Limitation by Insurance**. The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

Article 27. Disputes

27.1 **Submission.** In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this LGIA or its performance, such Party (the "disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and

resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

27.2 External Arbitration Procedures. Any arbitration initiated under this LGIA shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

27.3 Arbitration Decisions. Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this LGIA and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

27.4 Costs. Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

Article 28. Representations, Warranties, and Covenants

28.1 General. Each Party makes the following representations, warranties and covenants:

28.1.1 Good Standing. Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Large Generating Facility, Interconnection Facilities and Network Upgrades owned by such Party, as applicable, are located**;** and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this LGIA and carry out the transactions contemplated hereby and perform and carry out

all covenants and obligations on its part to be performed under and pursuant to this LGIA.

28.1.2 **Authority**. Such Party has the right, power and authority to enter into this LGIA, to become a Party hereto and to perform its obligations hereunder. This LGIA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

28.1.3 **No Conflict**. The execution, delivery and performance of this LGIA does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

28.1.4 **Consent and Approval**. Such Party has sought or obtained, or, in accordance with this LGIA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this LGIA, and it will provide to any Governmental Authority notice of any actions under this LGIA that are required by Applicable Laws and Regulations.

Article 29. Joint Operating Committee

29.1 **Joint Operating Committee**. Except in the case of ISOs and RTOs, Transmission Provider shall constitute a Joint Operating Committee to coordinate operating and technical considerations of Interconnection Service. At least six (6) months prior to the expected Initial Synchronization Date, Interconnection Customer and Transmission Provider shall each appoint one representative and one alternate to the Joint Operating Committee. Each Interconnection Customer shall notify Transmission Provider of its appointment in writing. Such appointments may be changed at any time by similar notice. The Joint Operating Committee shall meet as necessary, but not less than once each calendar year, to carry out the duties set forth herein. The Joint Operating Committee shall hold a meeting at the request of either Party, at a time and place agreed upon by the representatives. The Joint Operating Committee shall perform all of its duties consistent with the provisions of this LGIA. Each Party shall cooperate in providing to the Joint Operating Committee all information required in the performance of the Joint Operating Committee's duties. All decisions and agreements, if any, made by the Joint Operating Committee, shall be evidenced in writing. The duties of the Joint Operating Committee shall include the following:

29.1.1 Establish data requirements and operating record requirements.

29.1.2 Review the requirements, standards, and procedures for data acquisition equipment, protective equipment, and any other equipment or software.

29.1.3 Annually review the one (1) year forecast of maintenance and planned outage schedules of Transmission Provider's and Interconnection Customer's facilities at the Point of Interconnection.

29.1.4 Coordinate the scheduling of maintenance and planned outages on the Interconnection Facilities, the Large Generating Facility and other facilities that impact the normal operation of the interconnection of the Large Generating Facility to the Transmission System.

29.1.5 Ensure that information is being provided by each Party regarding equipment availability.

29.1.6 Perform such other duties as may be conferred upon it by mutual agreement of the Parties.

Article 30. Miscellaneous

30.1 Binding Effect. This LGIA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

30.2 Conflicts. In the event of a conflict between the body of this LGIA and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this LGIA shall prevail and be deemed the final intent of the Parties.

30.3 Rules of Interpretation. This LGIA, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this LGIA, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this LGIA), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this LGIA or such Appendix to this LGIA, or such Section to the LGIP or such Appendix to the LGIP, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this LGIA as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

30.4 Entire Agreement. This LGIA, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this LGIA. There are no other agreements, representations, warranties, or covenants which constitute any

part of the consideration for, or any condition to, either Party's compliance with its obligations under this LGIA.

30.5 No Third Party Beneficiaries. This LGIA is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

30.6 Waiver. The failure of a Party to this LGIA to insist, on any occasion, upon strict performance of any provision of this LGIA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this LGIA shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this LGIA. Termination or Default of this LGIA for any reason by Interconnection Customer shall not constitute a waiver of Interconnection Customer's legal rights to obtain an interconnection from Transmission Provider. Any waiver of this LGIA shall, if requested, be provided in writing.

30.7 Headings. The descriptive headings of the various Articles of this LGIA have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this LGIA.

30.8 Multiple Counterparts. This LGIA may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

30.9 Amendment. The Parties may by mutual agreement amend this LGIA by a written instrument duly executed by the Parties.

30.10 Modification by the Parties. The Parties may by mutual agreement amend the Appendices to this LGIA by a written instrument duly executed by the Parties. Such amendment shall become effective and a part of this LGIA upon satisfaction of all Applicable Laws and Regulations.

30.11 Reservation of Rights. Transmission Provider shall have the right to make a unilateral filing with FERC to modify this LGIA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this LGIA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this LGIA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

30.12 No Partnership. This LGIA shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to

impose any partnership obligation or partnership 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 or be an agent or representative of, or to otherwise bind, the other Party.

IN WITNESS WHEREOF, the Parties have executed this LGIA in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____
Todd Fridley
Title: Vice President, PNM NM Operations

Date: January 28, 2021

PUBLIC SERVICE COMPANY OF NEW MEXICO – TECHNICAL SERVICES

By: DocuSigned by: Jason Jones
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Title: Director, Engineering

Date: 11/16/2020

Summary of Interconnection Facilities, Network Upgrades, Distribution Upgrades and Contingent Facilities

The Public Service Company of New Mexico - Technical Services Solar Project ("PNM TS-Solar Project") Interconnection Request is in the Public Service Company of New Mexico ("PNM") Definitive Interconnection System Impact Study (DISIS) Queue Cluster No. 9. The Queue Cluster No. 9 Interconnection Requests were studied in two separate sub-clusters: Central Cluster and Four Corners Cluster. The PNM TS-Solar Project Interconnection Request was one of three Interconnection Requests in the Four Corners Cluster.

PNM performed a Interconnection Facilities Study ("FACS") based on results from the DISIS in Queue Cluster No. 9. The FACS report identified and provided cost and construction schedule estimates for the Transmission Provider's Interconnection Facilities, Station Network Upgrades and Contingent Facilities, defined herein, needed to interconnect all of the Four Corners Cluster generating facilities as shown in Exhibit 1 to Appendix C, and based on the assumption that all of these generating facilities would proceed at the same time. Any scenario of generating facilities not proceeding at the same time, withdrawing or including a modification not included in the FACS could result in a potential Re-Study and possible changes to the cost allocation associated with those upgrades.

The Interconnection Customer submitted an Interconnection Request in DISIS Queue Cluster No. 9 to interconnect the PNM TS-Solar Project 95.6 MW Large Generating Facility to the PNM Transmission System. The PNM TS-Solar Project is in the Four Corners Cluster that contains 732 MW of generation all interconnecting to the San Juan 345 kV Switching Station. The PNM TS-Solar Project has requested Energy Resource Interconnection Service.

1. Interconnection Facilities

(a) Interconnection Customer's Interconnection Facilities:

Description of Interconnection Customer's Interconnection Facilities (ICIF)

The Interconnection Customer will interconnect its Large Generating Facility at a Point of Interconnection at the Transmission Provider's San Juan 345 kV Switching Station, hereinafter referred to as the "San Juan Station", which is located in San Juan County, New Mexico. The Interconnection Customer's Large Generating Facility via the ICIF will interconnect to the San Juan Station in accordance with the provisions of Article 5.10 to this LGIA in the timeframes shown by the milestones as depicted in Appendix B to this LGIA. The ICIF are those facilities from the Large Generating Facility's step-up transformer to the Point of Change of Ownership as shown in Exhibit 2 to Appendix C to this LGIA.

The ICIF shall include:

- One 34.5/345 kV generator step-up transformer rated at 220 MVA and all related protective relay equipment;
- A 345 kV overhead transmission line from the Interconnection Customer's 345 kV bus to the Point of Change of Ownership at the dead-end insulators on the last generator tie-line A-frame terminal structure within the perimeter fence of the San Juan Station; and

- A fiber optic cable (in conjunction with the 345 kV transmission line) between Interconnection Customer's Large Generating Facility to the associated terminal facilities inside the San Juan Station as described in Section 2(b) of this Appendix A. Interconnection Customer will own the fiber optic communications line from Interconnection Customer's Large Generating Facility to the Point of Change of Ownership shown in Exhibit 2 to Appendix C to this LGIA.

The Large Generating Facility shall not cause voltage and current harmonics on the Transmission Provider's Transmission System that exceed the limits specified in IEEE Standard 519-1992.

Consistent with Article 9.6.1.2 of this LGIA, the Large Generating Facility shall be designed to maintain a power factor within the range of 0.95 leading to 0.95 lagging at the high-side of the generator substation.

Interconnection Customer is responsible for independently securing a contract for necessary back-feed and station service power for its proposed Large Generating Facility from the local area retail service provider, including any required line extension to facilitate such service.

Costs of the Interconnection Customer's Interconnection Facilities

The Interconnection Customer shall be solely responsible for and shall pay all costs associated with all of the ICIF as set forth above.

(b) Transmission Provider's Interconnection Facilities:

Description of Transmission Provider's Interconnection Facilities (TPIF)

The TPIF are those facilities from the Point of Change of Ownership, at the dead-end insulators on the last generator tie-line A-frame terminal structure located within the perimeter fence of the San Juan Station, to the Point of Interconnection (POI) and meter location within the San Juan Station as shown in Exhibit 2 to Appendix C to this LGIA.

2. Network Upgrades:

(a) Stand Alone Network Upgrades:

None.

(b) Other Network Upgrades:

Description of the Network Upgrades

To accommodate the interconnection of the Interconnection Customer's Large Generating Facility to the Transmission Provider's Transmission System, the Transmission Provider will construct the necessary Station Network Upgrades required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System. The Interconnection Customer shall fund the Station Network Upgrades as provided in the FACS report based on the allocated cost required to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System in accordance with the

provisions of Articles 11.3 and 12 of this Agreement. The Station Network Upgrades at the San Juan Station, as depicted in Exhibit 2 to Appendix C to this Agreement, include the following components:

- Connect to an abandoned Bay position.

Costs of the Network Upgrades

Exhibit 1 to Appendix A of this LGIA includes the Station Network Upgrades estimated cost of $4,358,374. It also includes a component for Administrative and General ("A&G") costs of three and thirty-six hundredths percent (3.36%), Engineering and Supervision ("E&S") costs of eight and twenty-five hundredths percent (8.25%) and New Mexico Gross Receipts Taxes ("NMGRT") of seven percent (7%).

The PNM TS-Solar Project Station Network Upgrades total estimated allocated costs, associated with interconnecting the Large Generating Facility, are $1,452,791 based on the total costs as depicted in Exhibit 2 to Appendix A of this LGIA and as allocated in accordance with PNM's LGIP Section 4.2.4 (a).

The PNM TS-Solar Project Station Network Upgrades estimated allocated costs excludes both the ICIF as described in Section 1(a) of this Appendix A, for which Interconnection Customer has sole cost responsibility, and the TPIF costs as described in Section 1(b) of this Appendix A.

The Station Network Upgrades estimated costs are based on the complete build-out of the various equipment components and associated labor required for the interconnection of all the various Interconnection Request's proposed generating facilities as identified in the FACS report for the DISIS Queue Cluster No. 9.

If the Interconnection Customer requests that the Transmission Provider advance the construction of any of the Station Network Upgrades in order to meet milestones as identified in Appendix B of this LGIA, such request will be handled in accordance with PNM's OATT, Attachment N - LGIP, Section 11.2 – Construction Sequencing. Likewise, Transmission Provider shall reimburse Interconnection Customer for any advanced funding that the Interconnection Customer provided to Transmission Provider for the costs of the materials, equipment, and labor associated with the advance construction of the Station Network Upgrades. Such reimbursement shall be in accordance with the provisions of Article 11.4 of this Agreement.

In the event of advancing construction, the Interconnection Customer agrees to execute a 1st Revised LGIA to this LGIA outlining the estimated Station Network Upgrades costs and construction schedule to interconnect the Large Generating Facility. The Interconnection Customer agrees to execute the 1st Revised LGIA within thirty (30) days of it being tendered by PNM in order that the milestones outlined in Attachment B of this LGIA be maintained.

Transmission Provider will invoice Interconnection Customer on a monthly basis for actual costs incurred for the Station Network Upgrades, in accordance with the provisions of Article 12 to this Agreement.

Construction of the Network Upgrades

The Transmission Provider will design, procure and construct the Station Network Upgrades in accordance with Article 5.1.1 of this Agreement, (the Standard Option) using Reasonable Efforts to complete the Station Network Upgrades by the dates set forth in Appendix B, Milestones. Transmission Provider responsibilities for the Station Network Upgrades include: (1) acquisition of materials, equipment, and labor associated with construction and installation of the additions to the San Juan Station and at no cost to the Transmission Provider; and (2) the construction of an A-Frame dead-end tower for interconnection to the San Juan Station. The Interconnection Customer and the Transmission Provider shall coordinate on the timing of the physical interconnection of the ICIF to the San Juan Station, which interconnections, and any associated outage schedule(s) to facilitate the interconnections, will be determined by and will be the responsibility of, the Transmission Provider.

Transmission Provider will only proceed with the design, procurement and construction of the Station Network Upgrades once the Interconnection Customer has provided the Transmission Provider written authorization to proceed as required in the provisions of Articles 5.5, and 5.6, and a form of financial security pursuant to Article 11.5 of this Agreement.

Interconnection Customer will ensure, in accordance with Good Utility Practice, appropriate coordination with the Transmission Provider such that installation of the Station Network Upgrades required in association with interconnecting the Interconnection Customer's Interconnection Facilities to the Transmission Providers Transmission System, can be accomplished in a timely manner and be available by the proposed In-Service Date.

3. Distribution Upgrades:
None.

4. Contingent Facilities:

The DISIS and FACS identified the sectionalizing breaker on the West Bus at the San Juan Station, as shown on Exhibit 2 to Appendix C, as Contingent Facilities for the PNM TS-Solar Project (IA-PNM-2017-15). As such the cost and construction cost timing for these Contingent Facilities is included in Exhibit 3 – Table 1 to Appendix A since the San Juan Station is dependent on a senior queue cluster that has Network Upgrades that PNM TS-Solar Project (IA-PNM-2017-15) is dependent upon. In addition, Exhibit 3 – Table 2 to Appendix A includes the estimated cost of the various equipment components and the associated labor for these Contingent Facilities. If the senior queue cluster Interconnection Request that these Contingent Facilities are based upon decides to terminate their LGIA then a Re-Study will have to be completed to determine which Network Upgrades would still be applicable for PNM TS-Solar Project (IA-PNM-2017-15).

SAN JUAN SWITCHYARD INTERCONNECTION ESTIMATE - NEW 345 KV LINE POSITION				
PROJECT SCHEDULE TASK	Labor (in-house)	MATERIAL & EQUIPMENT	3RD PARTY SERVICES AND CONSTRUCTION	TOTAL COST
Existing 345kV switchyard Addition of new 345 kV Line Position including (3) 345 kV PCBs, new line exit, instrument transformers and metering. Basis for estimate is EPC execution include all major equipment.				
Row Studies and Access Development	$ -	$ -	$0	$0
Governametal Permitting and Public Outreach	$ -	$ -	$0	$0
Transmisison	$ -	$ 217,835	$57,484	$275,319
Stations	$ -	$ 848,269	$ 617,576	$1,465,845
Communications	$ -	$ 95,817	$4,280	$100,097
Protection and Controls	$ -	$ 248,018	$339,681	$587,699
Enviromental	$ -	$ -	$ 12,915	$ 12,915
Row	$ -	$ -	$ -	$ -
Support Services	$ 87,500	$ -	$ 811,117	$ 898,617
SUBTOTAL COST	$ 87,500	$ 1,409,939	$ 1,843,054	$ 3,340,493
CONTINGENCY @ 10%	$ 8,750	$ 140,994	$ 184,305	$ 334,049
SUBTOTAL WITH CONTINGENCY	$ 96,250	$ 1,550,933	$ 2,027,359	$ 3,674,542
UTILITY LOADS AND TAXES				
A & G @ 3.36%				$ 123,465
E & S @ 8.25%				$ 303,150
TAXES @ 7.0%				$ 257,218
Total Network Upgrades				$4,358,374

Notes and Assumptions:

1. Pricing is based on 2020 unit costs and on current Transmission Provider's equipment standards and station design. With likely fluctuations in the price of raw materials, fuel, and labor, actual costs may vary in future years. Pricing is based upon current conceptual design assuming land is readily available.

2. Estimates include governmental permitting, design, materials, construction, construction management, and internal utility loads. Estimates do not include the cost of the generation tie line and isolating breaker which is the responsibility of the Interconnection Customer. Estimates only include environmental mitigation based on known facts at the time of study. Further mitigation that might be required will not be known until final design is complete and construction is ready to begin.

3. Project schedules are considered reasonably accurate but can be affected by permitting delays, extended land negotiations, equipment deliveries, weather, availability of workforce, and availability of outage clearance for construction. Schedules assume that Rights-Of-Way ("ROW") on federal lands can be obtained.

4. The project schedule is based on having all final design plans, permits, agreements, and authorizations completed prior to initiation of construction work. Schedule assumes typical material lead time and that outage windows for the San Juan Station will be available.

5. All designs are in accordance with PNM Breaker Configuration Policy.

6. Permitting time varies across the entire cluster by major task, but in some cases can be up to 12 months due to multiple jurisdictions.

7. The Four Corners Cluster schedule assumes that any Certificate of Public Convenience and Necessity ("CCN") or a location permit for Transmission Provider's Interconnection Facilities and Network Upgrades proposed in the FACS report could begin when notice to proceed is requested if necessary. Time to complete location permit or a CCN has not been factored into this schedule and will depend on the appropriate authorities' availability to complete required processes in a timely manner.

8. Barring unforeseen complications with local permitting requirements, availability of system outages, strikes, resource limitations etc., the proposed schedule for final design and construction is estimated to take 16 months from PNM's receipt of written authorization to proceed with work.

9. Transmission Provider may elect to contract any or all parts of the project.

Table 1 – Contingent Facilities Cost and Schedule

Station Equipment Upgrades	(M$)	Construction Time (Months)	Concurrent with network upgrades
West Bus Sectionalizing Breaker	2.6	16	Yes

Table 2 – San Juan Bus Breaker Cost Detail

SAN JUAN - SPLIT MAIN WEST BUS - CONTINGENT FACILITIES				
PROJECT SCHEDULE TASK	QTY	MATERIAL & EQUIPMENT	3RD PARTY SERVICES AND CONSTRUCTION	TOTAL COST
Existing 345kV switchyard in which a new West Main Bus sectionalizing PCB with (3) new CVTs each divided bus section and other relocation and improvement is required. Basis for estimate is EPC execution include all major equipment.				
Row Studies and Access Development		$ -	$ -	$ -
Governametal Permitting and Public Outreach		$ -	$ -	$ -
Transmisison		$ -	$ -	$ -
Stations		$ 716,194	$ 256,728	$ 972,922
Communications		$ 36,900	$ 1,427	$ 38,327
Protection and Controls		$ 116,058	$ 87,229	$ 203,287
				$ 3
Enviromental		$ -	$ 6,765	$ 6,765
Row		$ -	$ -	$ -
Support Services		$ -	$ 768,516	$ 768,516
SUBTOTAL COST		$ 869,152	$ 1,120,665	$ 1,989,820
CONTINGENCY @ 10%		$ 86,915	$ 112,067	$ 198,982
SUBTOTAL WITH CONTINGENCY		$ 956,067	$ 1,232,732	$ 2,188,802
UTILITY LOADS AND TAXES				
A & G @ 3.36%				$ 73,544
E & S @ 8.25%				$ 180,576
TAXES @ 7.0%				$ 153,216
Total Network Upgrades				***$ 2,596,138***

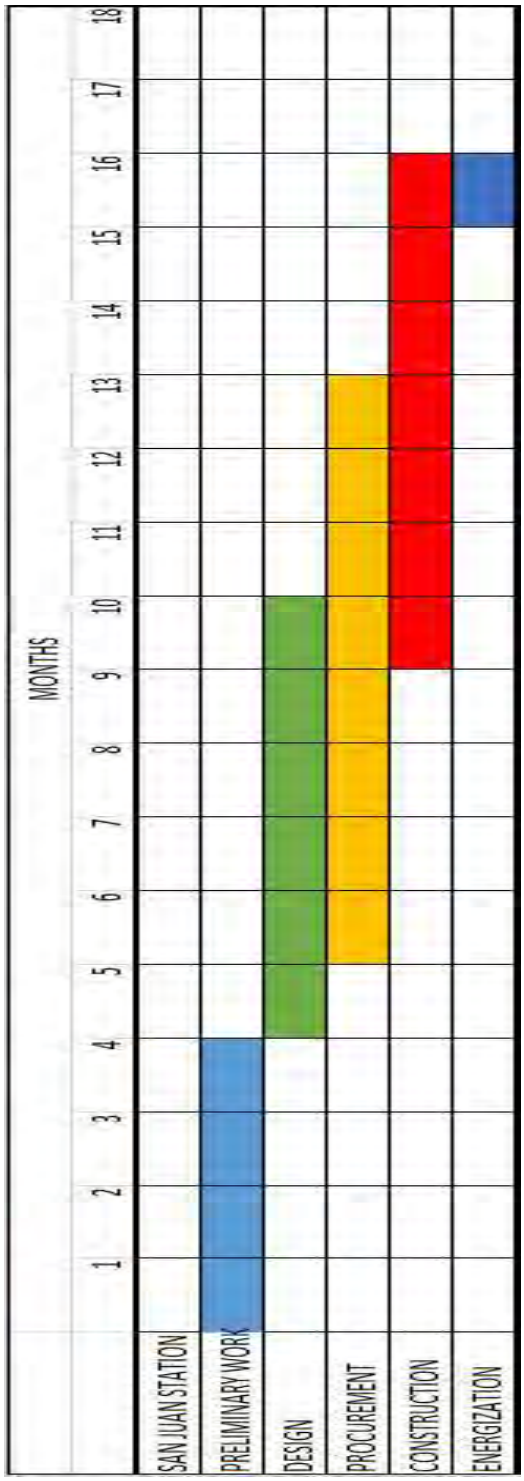
Construction of the Station Network Upgrades will be accomplished by Transmission Provider, who will use Reasonable Efforts to complete construction in time to meet the milestone dates provided below. Once the Interconnection Customer provides Transmission Provider written authorization to proceed and a form of financial security (pursuant to Articles 5.5, 5.6, and 11.5 (respectively) of this Agreement) the estimated timeline for completion of the Station Network Upgrades is sixteen (16) months. Interconnection Customer agrees to participate in a coordination meeting with the Transmission Provider at the time written authorization to proceed is provided, as referenced in the Milestone chart below.

The Interconnection Customer will, in accordance with Good Utility Practice, coordinate with the Transmission Provider with respect to any required line outages, which dates and times shall be solely determined by the Transmission Provider. The Interconnection Customer agrees to keep the Transmission Provider informed (in writing) regarding any changes to Interconnection Customer's construction schedule and/or the milestone dates herein.

The following is the estimated schedule to complete permitting, environmental review, land acquisition, design and engineering, procurement, construction, and interconnection of the Station Network Upgrades required in association with interconnection of the Large Generating Facility to Transmission Provider's Transmission System.

Proposed Schedule/Timeline for the Station Network Upgrades:

Station Network Upgrades	Schedule/Timeline
Construct the Station Network Upgrades.	**Sixteen (16) months**



The schedule on page 75 ("Schedule") assumes all work to be performed will be on land or easements that are already owned by the Transmission Provider or will be acquired as a part of the Station Network Upgrades and that any necessary permitting will be completed prior to beginning procurement and construction activities, and that any necessary government permits can be readily obtained. The schedule can be affected by permitting delays, equipment deliveries, weather, availability of workforce, and availability of outage clearance for construction. In particular, lead times for receipt of certain materials and equipment, required for the Station Network Upgrades, as contemplated in the Schedule could be very different by the time the Interconnection Customer determines it is ready to provide written authorization to proceed (and the letter of credit) to Transmission Provider, to begin work efforts. Therefore, Transmission Provider reserves the right to review and modify the proposed Schedule as may be required; at the time written authorization to proceed is provided, to accommodate impacts resulting from regional, national, and international events.

The Schedule also assumes that Transmission Provider will not have to make application for a Certificate of Public Convenience and Necessity ("CCN") or location permit at the New Mexico Public Regulation Commission for the Transmission Provider Interconnection Facilities and Network Upgrades proposed in this LGIA, which process, if required, could add an additional fifteen (15) to eighteen (18) months to the proposed timelines.

Significant Milestones, Dates and the Responsible Party:

"IC" means Interconnection Customer

"TP" means Transmission Provider

Milestone:	**Date:**	**Responsible Party:**
IC and TP provide each other Certification of Insurance per Article 18.3.9 of this Agreement.	Within ten (10) Calendar Days following execution of this Agreement.	IC and TP
IC provides TP a form of financial security per Article 11.5 (*i.e.*, a Letter of Credit) in the amount of $1.45 million and written authorization to proceed with procurement and construction of Station Network Upgrades.	At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of Station Network Upgrades.	IC
IC will hold a coordination meeting with TP when IC provides written authorization to proceed with procurement and construction of Station Network Upgrades.	Within thirty (30) Calendar Days of providing written authorization to proceed with procurement and construction of Station Network Upgrades.	IC and TP
IC coordinates with TP on installation of metering and communications equipment associated with IC's Large Generating Facility.	At least 90 Calendar Days prior to the required installation of metering and communications equipment.	IC and TP
IC and TP complete any necessary Switching Procedures, Operating Procedures and voltage schedule guidelines at the Point of Interconnection, required in association with the Large Generating Facility and Interconnection Facilities.	At least 90 Calendar Days prior to the proposed In-Service Date.	IC and TP

IC to provide TP a copy of an agreement that IC has entered into with the local retail service provider in the vicinity, to procure back-feed and station service power for IC's Large Generating Facility.	At least 90 Calendar Days prior to the proposed In-Service Date.	IC
Proposed **In-Service Date** and date on which back-feed and station power can be made available for energization of IC's transmission line and Large Generating Facility.	**March 1, 2022**	IC
Proposed **Initial Synchronization Date** and date that Trial Operations of Large Generating Facility can begin to be conducted by IC.	**April 1, 2022**	IC in coordination with TP for transmission of Large Generating Facility power and energy output
Proposed **Commercial Operation Date.**	**June 2, 2022** and commensurate with the date provided by IC in the letter to TP announcing Commercial Operation Date pursuant to Appendix E of this LGIA.	IC

Transmission Provider's ability to meet the proposed Milestone dates depends on Interconnection Customer adhering to its proposed schedule and completing and providing proof of all required permitting and regulatory approvals. Additionally, timely completion and interconnection of the Interconnection Customer's Interconnection Facilities to the Transmission Provider's Transmission System assumes system outages (if required) are/will be available when needed.

Interconnection Customer shall adhere to the requirements set forth in Article 5.10.1 of this LGIA regarding the submission of specifications for the Interconnection Customer's Interconnection Facilities.

Interconnection Customer has chosen to interconnect as a "Energy Resource," pursuant to Article 4.1.1 of the LGIA.

The Parties have included details regarding the PNM TS-Solar Project and the Interconnection Customer's Interconnection Facilities (ICIF) and Station Network Upgrades, in Appendix A to this LGIA. The estimated cost for the Station Network Upgrades are also included in Appendix A. The Interconnection Customer's proposed Milestones (including the proposed In-Service Date, Initial Synchronization Date, and Commercial Operation Date) are included in Appendix B to this LGIA.

Interconnection Customer is responsible for independently securing a contract for necessary back-feed power and station service power, for its proposed Large Generating Facility, from the local area retail service provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Interconnection Customer and local area retail service provider and provided to Transmission Provider at least ninety (90) Calendar Days prior to the In-Service Date of the Large Generating Facility and Interconnection Customer's Interconnection Facilities.

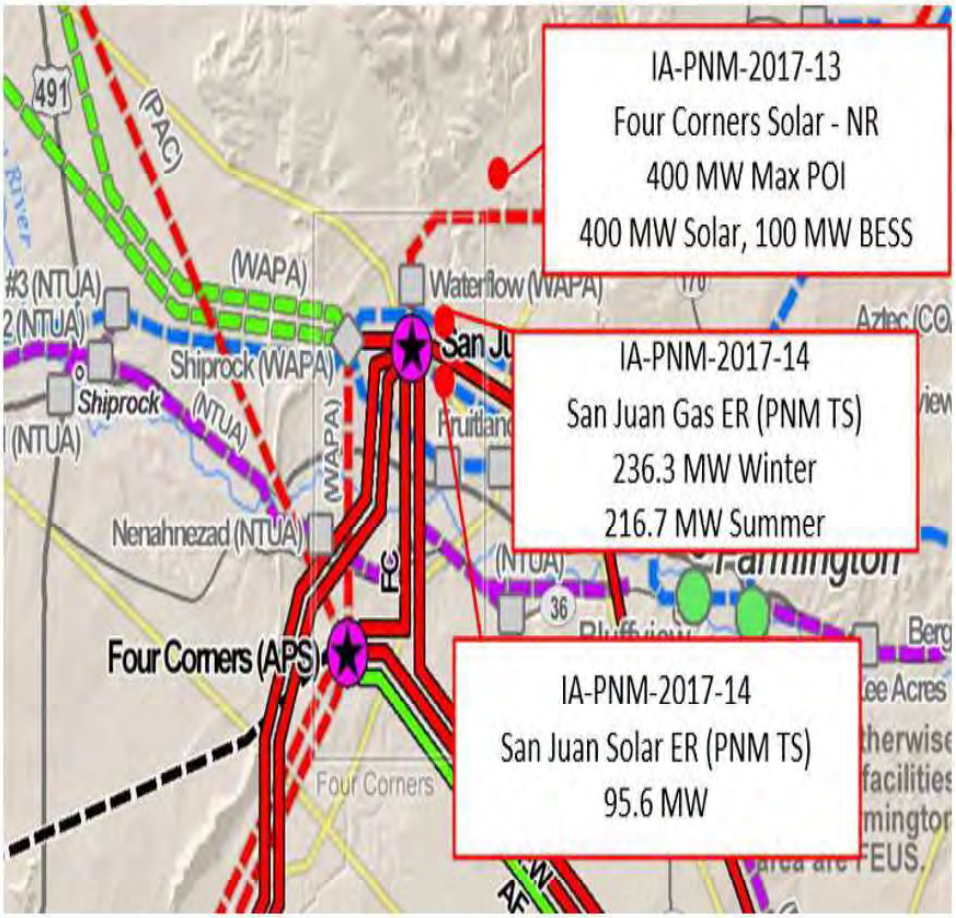
Included in this Appendix C are the following:

Exhibit 1 – An area map depicting the general locations of the DISIS Queue Cluster No. 9 generating facilities relative to the area transmission facilities.

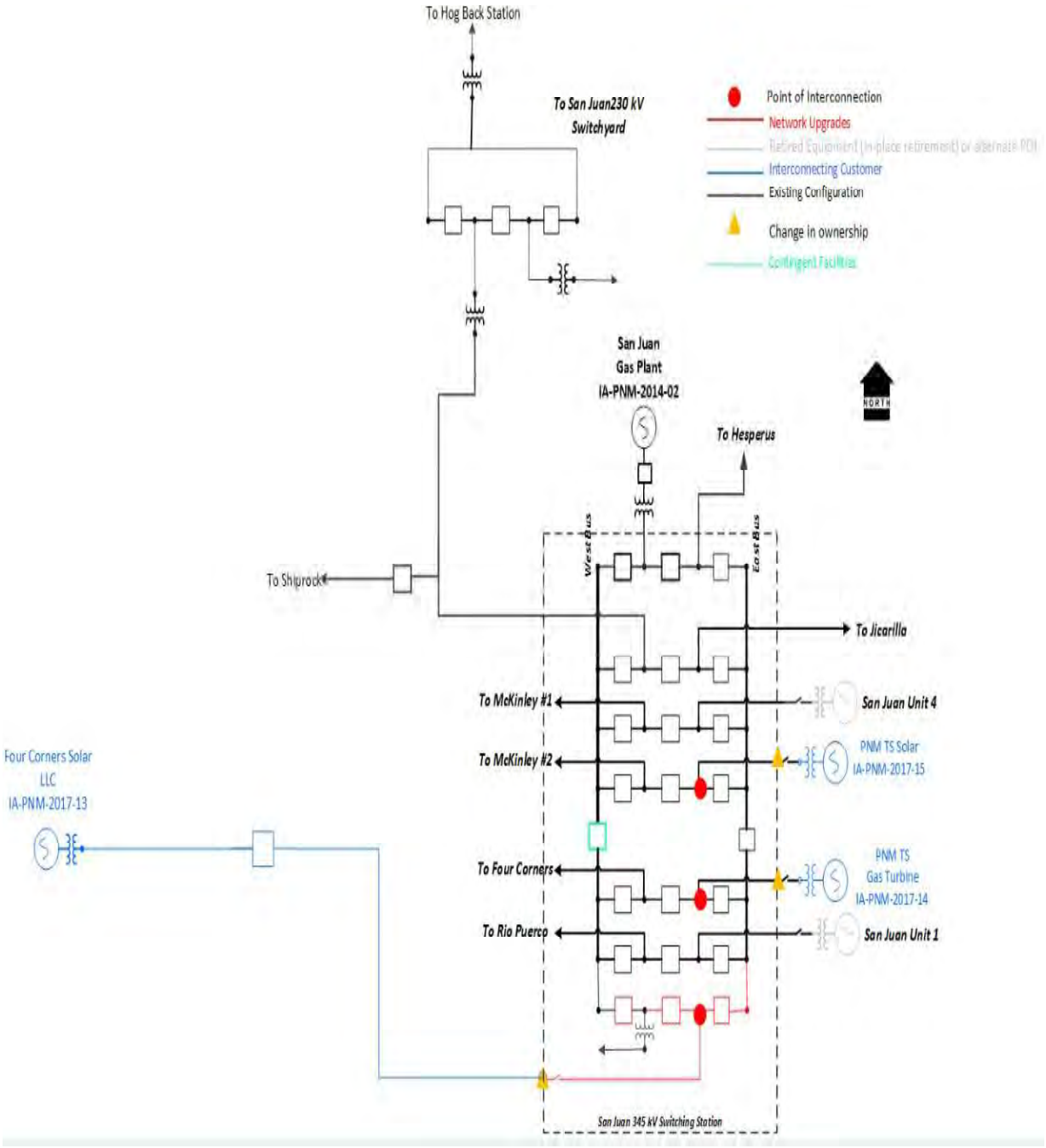
Exhibit 2 – A general diagram of PNM TS-Solar Project Interconnection Facilities and Network Upgrades.

The Interconnection Customer shall work with the Transmission Provider to develop the necessary operating procedures in order to fulfill the requirements set forth in Article 9.4 to this Agreement regarding operation of the Large Generating Facility and the ICIF in accordance with all applicable requirements of the Transmission Provider and the Balancing Authority Area. All such operating procedures shall be completed and implemented at least ninety (90) Calendar Days prior to initial energization (*i.e.*, the In-Service Date) of the Large Generating Facility and the ICIF. Additionally, Interconnection Customer shall be responsible for complying with any applicable North American Electric Reliability Council ("NERC") and Western Electricity Coordinating Council ("WECC") requirements for Large Generating Facility operators.

Area Map with General Locations of the Definitive Interconnection System Impact Study Queue Cluster No. 9 Generating Facilities Relative to the Area Transmission Facilities



Generic Diagram of PNM TS-Solar Project
Interconnection Facilities and Network Upgrades



Infrastructure security of Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day Transmission System reliability and operational security. FERC will expect all Transmission Providers, market participants, and Interconnection Customers interconnected to the Transmission System to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

This Appendix E is a part of the LGIA between Transmission Provider and Interconnection Customer.

[Date]

Via E-mail or Facsimile

Ms. Alicia Ortega
Director, NM Ops Projects & Program Management
Public Service Company of New Mexico
2401 Aztec Rd. NE
Mail Stop Z200
Albuquerque, NM 87107

Re: PNM TS-Solar Project -
COD of the PNM TS-Solar Project 95.6 MW Large Generating Facility

Dear Ms. Ortega:

On **[Date]** PNM Technical Services completed the trial operation of the PNM TS-Solar Project 95.6 MW Large Generating Facility ("Project"). This letter confirms that PNM-Technical Services, commenced Commercial Operation of its Project effective as of **[Date plus one day]**.

Thank you.

[Signature]

Name: _____

PNM Technical Services
6800 N. Country Road
P.O. Box 227
Waterflow, NM 87421

Notices:

Transmission Provider:

Secretary
Public Service Company of New Mexico
414 Silver Ave. S.W.
Albuquerque, NM 87102
Fax: (505) 241-2368

And a copy to:

Director, NM Ops Projects & Program Management
Public Service Company of New Mexico
2401 Aztec Rd. NE
Mail Stop Z200
Albuquerque, NM 87107
Fax: (505) 241-4363

Interconnection Customer:

PNM Technical Services
Attn: Jason Jones
6800 N. Country Road
P.O. Box 227
Waterflow, NM 87421

Telephone: (505) 598-7990

Email: Jason.Jones@pnm.com

With a copy to:

PNM Technical Services
Attn: Christian Reeves
2401 Aztec Rd. N.E.
MS-Z120
Albuquerque, NM 87107

Telephone: (505) 241-2185

Email: Christian.Reeves@pnm.com

Addresses for Delivery of Notices and Billings

Billings and Payments:

Transmission Provider:

Manager – NM Ops Projects & Program Management
Public Service Company of New Mexico
2401 Aztec Rd. NE MSZ200
Albuquerque, NM 87107
Telephone: (505) 241-0699

Interconnection Customer:

PNM Technical Services
Attn: Jason Jones
6800 N. Country Road
P.O. Box 227
Waterflow, NM 87421

Telephone: (505) 598-7990

Email: Jason.Jones@pnm.com

Alternative Forms of Delivery of Notices (telephone, facsimile or email):

Transmission Provider:

Voice telephone: (505) 241-2607
Facsimile: (505) 241-4363
Email: Alicia.Ortega@pnm.com

Interconnection Customer:

24 Hour Operations Contact

PNM Technical Services
2401 Aztec Dr.NE
Albuqerque, NM 87107
Telephone: (505) 241-2179
Email: eric.meadors@pnm.com

NOTE: THIS APPENDIX G SHALL NOT BE APPLICABLE TO THE INTERCONNECTION OF THE PNM TS-SOLAR PROJECT LARGE GENERATING FACILITY TO THE TRANSMISSION PROVIDERS TRANSMISSION SYSTEM

Appendix G sets forth requirements and provisions specific to a wind generating plant. All other requirements of this LGIA continue to apply to wind generating plant interconnections.

A. Technical Standards Applicable to a Wind Generating Plant

i. Low Voltage Ride-Through ("LVRT") Capability

A wind generating plant shall be able to remain online during voltage disturbances up to the time periods and associated voltage levels set forth in the standard below. The LVRT standard provides for a transition period standard and a post-transition period standard.

Transition Period LVRT Standard

The transition period standard applies to wind generating plants subject to FERC Order 661 that have either: (i) interconnection agreements signed and filed with the Commission, filed with the Commission in unexecuted form, or filed with the Commission as non-conforming agreements between January 1, 2006 and December 31, 2006, with a scheduled in-service date no later than December 31, 2007, or (ii) wind generating turbines subject to a wind turbine procurement contract executed prior to December 31, 2005, for delivery through 2007.

1. Wind generating plants are required to remain in-service during three-phase faults with normal clearing (which is a time period of approximately 4 – 9 cycles) and single line to ground faults with delayed clearing, and subsequent post-fault voltage recovery to pre-fault voltage unless clearing the fault effectively disconnects the generator from the system. The clearing time requirement for a three-phase fault will be specific to the wind generating plant substation location, as determined by and documented by the transmission provider. The maximum clearing time the wind generating plant shall be required to withstand for a three-phase fault shall be 9 cycles at a voltage as low as 0.15 p.u., as measured at the high side of the wind generating plant step-up transformer (i.e. the transformer that steps the voltage up to the transmission interconnection voltage or "GSU"), after which, if the fault remains following the location-specific normal clearing time for three-phase faults, the wind generating plant may disconnect from the transmission system.

2. This requirement does not apply to faults that would occur between the wind generator terminals and the high side of the GSU or to faults that would result in a voltage lower than 0.15 per unit on the high side of the GSU serving the facility.

3. Wind generating plants may be tripped after the fault period if this action is intended as part of a special protection system.

4. Wind generating plants may meet the LVRT requirements of this standard by the performance of the generators or by installing additional equipment (e.g.. SVC, etc.) within the wind generating plant or by a combination of generator performance and additional equipment.

5. Existing individual generator units that are, or have been, interconnected to the network at the same location at the effective date of the Appendix G LVRT Standard are exempt from meeting the Appendix G LVRT Standard for the remaining life of the existing generation equipment. Existing individual generator units that are replaced are required to meet the Appendix G LVRT Standard.

Post-transition Period LVRT Standard

All wind generating plants subject to FERC Order No. 661 and not covered by the transition period described above must meet the following requirements:

1. Wind generating plants are required to remain in-service during three-phase faults with normal clearing (which is a time period of approximately 4 – 9 cycles) and single line to ground faults with delayed clearing, and subsequent post-fault voltage recovery to pre-fault voltage unless clearing the fault effectively disconnects the generator from the system. The clearing time requirement for a three-phase fault will be specific to the wind generating plant substation location, as determined by and documented by the transmission provider. The maximum clearing time the wind generating plant shall be required to withstand for a three-phase fault shall be 9 cycles after which, if the fault remains following the location-specific normal clearing time for three-phase faults, the wind generating plant may disconnect from the transmission system. A wind generating plant shall remain interconnected during such a fault on the transmission system for a voltage level as low as zero volts, as measured at the high voltage side of the wind GSU.

2. This requirement does not apply to faults that would occur between the wind generator terminals and the high side of the GSU.

3. Wind generating plants may be tripped after the fault period if this action is intended as part of a special protection system.

4. Wind generating plants may meet the LVRT requirements of this standard by the performance of the generators or by installing additional equipment (e.g. SVC, etc.) within the wind generating plant or by a combination of generator performance and additional equipment.

5. Existing individual generator units that are, or have been, interconnected to the network at the same location at the effective date of the Appendix G LVRT Standard are exempt from meeting the Appendix G LVRT Standard for the remaining life of the existing generation equipment. Existing individual generator units that are replaced are required to meet the Appendix G LVRT Standard.

ii. Power Factor Design Criteria (Reactive Power)

The following reactive power requirements apply only to a newly interconnecting wind generating plant that has executed a Facilities Study Agreement as of the effective date of the Final Rule establishing the reactive power requirements for non-synchronous generators in

section 9.6.1 of this LGIA (Order No. 827). A wind generating plant to which this provision applies shall maintain a power factor within the range of 0.95 leading to 0.95 lagging, measured at the Point of Interconnection as defined in this LGIA, if the Transmission Provider's System Impact Study shows that such a requirement is necessary to ensure safety or reliability. The power factor range standard can be met by using, for example, power electronics designed to supply this level of reactive capability (taking into account any limitations due to voltage level, real power output, etc.) or fixed and switched capacitors if agreed to by the Transmission Provider, or a combination of the two. The Interconnection Customer shall not disable power factor equipment while the wind plant is in operation. Wind plants shall also be able to provide sufficient dynamic voltage support in lieu of the power system stabilizer and automatic voltage regulation at the generator excitation system if the System Impact Study shows this to be required for system safety or reliability.

iii. Supervisory Control and Data Acquisition Capability

The wind plant shall provide SCADA capability to transmit data and receive instructions from the Transmission Provider to protect system reliability. The Transmission Provider and the wind plant Interconnection Customer shall determine what SCADA information is essential for the proposed wind plant, taking into account the size of the plant and its characteristics, location, and importance in maintaining generation resource adequacy and transmission system reliability in its area.

EXHIBIT B

CONTRACTOR DELIVERABLES TABLE

1. SCOPE

This Exhibit B sets forth the Contractor Deliverables that Contractor shall deliver to Owner for the Project pursuant to this Agreement.

2. RESPONSIBILITIES

2.1 Contractor shall develop a comprehensive design package for the Project consisting of drawings generated in AutoCAD. Contractor shall submit to Owner a complete drawing package for the Project which shall consist of the following minimum drawing package:

2.1.1 Cover sheet
2.1.2 Site plan
2.1.3 Grading and drainage plan
2.1.4 Soil erosion and sediment control
2.1.5 Symbols, abbreviations and notes
2.1.6 Foundation plans and details
2.1.7 Structural plans, details and elevations
2.1.8 Array layout with shading diagrams
2.1.9 Single-line electrical diagrams
2.1.10 Electrical schematic diagrams
2.1.11 Power and control wiring, including AC and DC systems
2.1.12 PCS enclosure drawings, where applicable
2.1.13 Series and parallel string wiring diagrams
2.1.14 Inverter installation plans
2.1.15 Grounding plans
2.1.16 SCADA system
2.1.17 Fence drawing

2.2 Other Documentation

2.2.1 Contractor shall submit, in both hard and soft copy, the additional documentation for the Project set forth below. Hard copies shall be in the form of three ring binders with a table of contents and tabs. Spines of the hard copy binders shall be marked to identify the documentation. Soft copies shall be posted on Contractor's .ftp website for Owner's access.

2.2.1.1 Site-specific health and safety plan for the Site as required under Exhibit D to this Agreement.

2.2.1.2 Topographical survey for site

2.2.1.3 Site geotechnical (including pile testing), hydrology (pre and post construction) reports

2.2.1.4 As-built drawings for the Project shall be submitted prior to Final Completion and no later than ninety (90) days following the Substantial Completion Guaranteed Date and shall reflect the final actual details of the completed Project.

2.2.1.5 Commissioning Plan for the Project as required under this Agreement.

2.2.1.6 Commissioning specifications for the Project shall be submitted in coordination with Contractor's issuance of subcontract agreements.

2.2.1.7 Commissioning logs for the Project shall be submitted as required under this Agreement.

2.2.1.8 Test reports for the Project shall be submitted as required under this Agreement.

2.2.1.9 Required Manuals for the Project shall be submitted no less than thirty (30) days prior to the scheduled commencement of training for Operator Personnel.

2.2.1.10 Training schedule and course outline for the Project, consistent with Exhibit E, shall be submitted no less than forty-five (45) days prior to the scheduled commencement of training for Operator Personnel.

2.2.1.11 All other Work-related information and documentation reasonably requested by Owner, consistent with the terms of this Agreement.

3. DESIGN REVIEW

3.1 Owner and Contractor agree to participate in an accelerated review of major Equipment and designs for the Project by attending an on-board design review conference for the Project (the "**Conference**").

3.2 The purpose of the Conference is to afford Owner the opportunity to ensure that Contractor's design and final selection of equipment for the Project is in accordance with this Agreement.

3.3 The Conference shall be convened when engineering of the Project is approximately thirty percent (30%) complete, 60% complete, and 90% complete. A engineering design package for the Project shall be provided to Owner at least one (1) week prior to the Conference at the relevant 30/60/90 intervals above

3.4 Owner shall be provided the Conference schedule for the Project no less than two (2) weeks prior to the Conference for the Project.

3.5 The Conference shall be held online or at a mutually agreed upon location.

3.6 Contractor shall pay for all Conference facilities and meals at Contractor's office.

3.7 All Conference participants shall pay their own travel, lodging and other expenses.

3.8 Contractor and Owner shall provide access to their respective designated representatives during the Conference.

3.9 The sixty percent (60%) complete design package shall consist of the following:

3.9.1 Array layout with major equipment locations

3.9.2 AC single line(s)

3.9.3 DC single line(s)

3.9.4 Conceptual PCS layout

3.9.5 Conceptual grading plan

3.9.6 Conceptual storm water plan

3.9.7 Instrumentation and control block diagram

3.9.8 Monitored points list

3.9.9 Site logistics plan

3.9.10 Specification list

3.9.11 Purchase specifications for:

- 3.9.11.1 Inverter transformer
- 3.9.11.2 [Reserved]
- 3.9.11.3 Inverter
- 3.9.11.4 Medium voltage cable
- 3.9.11.5 High voltage cable
- 3.9.11.6 Interconnection Substation equipment
- 3.9.11.7 SCADA system
- 3.9.11.8 UPS system
- 3.9.11.9 Fiber optics

EXHIBIT C

PERMITS

EXHIBIT C-1
APPLICABLE PERMITS (OWNER)

Sunbelt Project

Permit/Approval/Surveys	**Agency**
All other Applicable Permits/approvals/ surveys as required by Governmental Authorities not listed under Exhibit C-2 to the Agreement. These may include: • Land use/zoning approvals • Clean Water Act permits, including National Pollutant Discharge Elimination System (NPDES) permits associated with construction activities (Owner coverage) • Fugitive dust permits (Owner coverage) • National Environmental Policy Act compliance	As required

EXHIBIT C-2
CONTRACTOR-ACQUIRED PERMITS

Sunbelt Project

Permit/Approval	**Agency**
Required Permits/Approvals: National Pollutant Discharge Elimination System (NPDES) permits associated with construction activities (Contractor coverage) Fugitive dust permit (Contractor coverage) Grading permits Fence permits Building permits (if applicable) Access permits Trailer permits, and associated drinking water and wastewater permit (if necessary) New Mexico Contractor's license number Fuel storage tank permit (Contractor coverage) OSHA permit (Contractor coverage) Archaeological and biological surveys	As required

EXHIBIT D

SAFETY MANUAL

EH&S MANUAL

Affordable Solar Installation, Inc., DBA Gridworks
4840 Pan American E Fwy NE
Albuquerque, NM 87109

Original Draft Date - May 13, 2020

Policy Revisions

Original Policy Name	Rev Date	New Policy Name/#	Location/Link
LOTO	2/23/22	LOTO	Page 112 this document
Drugs and Alcohol	5/4/22	Drug and Alcohol Policy #009	Gridworks EHS Manual - Drug-Alcohol Policy Rev4 FINAL.pdf
Modified Duty for Work Related Injuries (formerly pg. 12)	5/4/22	Return to Work Policy #035	Gridworks EHS Manual - Return To Work Policy Rev2 FINAL.pdf
NEW POLICY	5/4/22	Stop Work Authority #039	Gridworks EHS Manual - Stop Work Authority FINAL.pdf
Employee Warning Notice for Safety Violations & Form (formerly pg. 15-17)	5/4/22	Disciplinary Policy for Safety Violations #007	Gridworks EHS Manual - Disciplinary Policy for Safety Violations FINAL.pdf
SAFETY FIRST REWARDS PROGRAM (formerly pg. 105)	N/A	Policy Eliminated per OSHA LOI	N/A
Incident Reporting	5/5/22	Same	Policy updated in this document
COVID Response Policy	5/5/22	Same	Policy updated in this document

Affordable Solar Installation, Inc., DBA Gridworks

TABLE OF CONTENTS

Environmental Health & Safety Operating Procedures **PAGE #**

(page #'s might be off as we update our manual)

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar Installation, Inc., DBA Gridworks

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar Installation, Inc., DBA Gridworks

Gridworks Commitment to Safety

Employees, contractors, and guests:

Affordable Solar Installation, Inc. does business (DBA) as Gridworks; all references to Affordable Solar and/or Gridworks in our EH&S policies are all to be treated as the same.

At Gridworks our goal is to conduct business responsibly and to protect the health and safety of our employees, contractors, visitors, and to protect the environment. We are committed to continuous improvement of our environmental, health, and safety (EH&S) performance throughout our operations.

Although creating a safe workplace begins with our management team, it involves every employee and contractor we have. We need to work together to achieve the common goal of an accident and injury free workplace.

As our commitment to safety and the environment, we review our safety policies often and revise them as our company grows and expands operations. We in the process of reviewing all our EH&S policies and revising them. As we do that, we will document the change(s) on the first page of this document.

The following document contains the majority of our EH&S policies and should be combined with the updated EH&S polices listed on Page 1 of this document; together they encompass the entire EH&S manual of Gridworks.

Best regards,

Amy Gants, Director of EH&S
amy.gants@gridworks.energy
307-231-0025

Gridworks' employees: Please use the link(s) to get the updated policies on page 1 of this document and include them with this document as our entire EH&S manual. If you have questions regarding a policy in this manual or an updated policy, please reach out to Amy Gants, Director of EH&S.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar Installation, Inc., DBA Gridworks

TITLE: BASIC SAFETY PRINCIPLES AND RULES, POLICY 001

PURPOSE: The information in this policy states the basic safety principles and safety rules that are to be followed by all Affordable Solar employees.

SCOPE:

The information in this policy applies to all Affordable Solar employees on how to work safely, provide a safe workspace and general safety practices.

RESPONSIBILITY:

Affordable Solar believes that accidents can be prevented, and that employees and property can be protected from controllable hazards. Employees are required to comply with the basic safety principles and rules set forth by Affordable Solar.

POLICY/PROCEDURE:
To reduce any injury potential to employees, our business partners, and visitors, Affordable Solar requires that employees follow basic safety and accident prevention principles and rules:

1. Report any injury to your supervisor immediately.
2. Wear proper PPE.
3. Wear a uniform consisting of a shirt with at least a 4" sleeve and denim pants.
4. Use safe lifting techniques.
5. Ask for help if an object is too heavy.
6. Only authorized personnel may use material handling devices and equipment.
7. Follow forklift and heavy equipment safety rules.
8. Maintain good housekeeping. Keep work area clean and clutter free.
10. Never make changes on equipment to bypass safety devices.
11. Make sure that electrical tools are properly grounded and that no electrical hazard exists from standing water.
12. Horseplay is prohibited.
13. Smoking is allowed only in authorized areas.
14. Use approved ladders to climb.
16. Refrain from use of narcotics and alcohol in compliance with company policies.
17. Identify the location of the first aid kit.
18. Locate fire evacuation routes.
19. Observe all safety signs.

Refer to Return to Work Policy #035 before allowing injured employees to return to work

TITLE: INCIDENT REPORTING, POLICY 002

PURPOSE: The purpose of this procedure is to establish a standard system for the REPORTING of incidents involving Affordable Solar property, equipment, and employees.

REPORTS will be conducted for the following reasons.

- Injury/First Aid: incidents involving employee injury.
- Equipment/Operational: incidents involving material handling equipment (forklifts, front-end loaders, cranes, tuggers, etc.).
- Environmental: incidents involving hazardous material spills or releases (hydraulic fluid spill, Freon release, etc.).
- Vehicular: incidents involving motor vehicles (rental cars and commercial vehicles used for work).
- Fire.
- Vandalism and Theft.
- Near Miss: incidents in which an injury or adverse outcome was possible but did not occur.
- Incidents involving non-Affordable Solar property, equipment, and/or personnel.

SCOPE: The information in this policy applies to all Affordable Solar Employees, Management, supervisors, or designee, including the Safety department.

RESPONSIBILITY:

- Employees are responsible for reporting all work-related incidents to their supervisor immediately.
- The Supervisor or Designee is responsible for a follow-up action regarding unsafe conditions or unsafe actions of an employee.
- The Supervisor or Designee is responsible for notifying their Manager and the Safety Dept. immediately.
- The Supervisor or Designee is responsible for the completion of the incident report within 24 hours. The Supervisor or Designee must ensure that the incident report reaches Safety Dept.
  within 24 hours following the incident.
- The onsite supervisor or designee is responsible for arranging transportation for any injured person to the nearest Concentra clinic or other approved heath care facility.
- In the event of an emergency, call 911 for EMS.

PROCEDURE:

In case of emergency-dial 911

- Employees are to report all identified unsafe conditions, unsafe actions, and work-related incidents to their supervisor as soon as safely possible.
- Employees are to report all work-related incidents resulting in first aid or injury to their Supervisor immediately. Failure to report in incident may result in the denial of claims under workman's comp law.
- Employees must report all near misses to their supervisor immediately. Near misses identify symptoms of bigger problems and must be corrected before an injury or property damage occurs.
- The Supervisor or Designee will notify the Manager and Safety Dept of all work-related incidents immediately.
- The Supervisor will complete an initial incident report with input from employee involved in the incident. **(Appendix A).**

- For incidents involving employee injury, follow the steps found on the Emergency flow chart form **(Appendix B)** posted and in site plans.
- For incidents involving injury, the Safety Dept will notify the workers' compensation insurance carrier and obtain a claim number.
- Employees needing treatment for an injury shall be directed to the closest OCC-MED facility for evaluation. **For non-life-threatening injuries, employees must be brought to the nearest Concentra occupational health clinic. Questions about where they are should be directed to Amy Gants, director of EH&S or Angela Valdez, HR.**
- For incidents involving injury, the supervisor, or designee is required to document the occurrence, even if the injured party refuses treatment at that time.
- Violation of any item of this policy will result in a disciplinary action up to and including termination.

APPENDICES:

Appendix A – Affordable Solar Initial Accident/Incident Report
Appendix C – Witness Statement
Appendix D – Affordable Solar Initial Damage/Environmental Report

Appendix A

Employee Initial INJURY Report

FOR DOCUMENTING AN INCIDENT INVOLVING INJURY TO PERSON(S) DATE_____

Person filling out the report	Report Number_____
Employee name	Employee ID
Position	Supervisor
Phone number	Job Name

Who was injured?
Name of injured person (IP)
Position of IP (IE, laborer, supervisor).
Supervisor of IP.
Phone number of IP.
Address of IP.
Status of IP as of this report?
Who was notified of this report?

Mechanics of injury
Is this an automobile injury?
What task was being performed at the time of injury?
What location did the injury happen at?
What equipment was involved in the injury?
Witnesses with phone numbers.
Witnesses Cont.
Was any property damaged?

Description of incident

Sketch of location, related to the incident

Signature Date Signed

Approved Locations:

- **Concentra Urgent Care Albuquerque Locations**
  - Singer location – 3811 Commons Ave NE Albuquerque, NM. 87109
    Phone-505-345-9599
    Open Monday – Friday 8-5

  - Northpointe – 5700 Harper Dr NE, Albuquerque, NM. 87109
    Phone 505-832-9166 Open
    Monday – Friday 8-5

  - Menaul – 3101 Menaul Blvd NE. Albuquerque, NM. 87107
    Phone 505-842-5151
    Open Monday – Friday 8-5

- **Concentra Urgent Care – Santa Fe, NM**
  - 720 St Michaels Dr STE C, Santa Fe, NM 87505
    (505) 438-9402
    Open Monday – Friday 8-5

New Mexico Employees must go to a ASI/Gridworks approved provider for the first 60 days after an injury.

- **If the injury is life-threatening CALL 911** and have the employee brought to the nearest emergency room for treatment.
  - If the injury was life-threatening and the employee was taken to a nearby hospital, all follow-up visits after release from the hospital must be with a company approved Concentra office for the first 60 days.
- ALL non-life-threatening injuries must be taken to the nearest Concentra occupational health and/or Urgent care clinic.
  - There are several locations in Albuquerque and one in Santa Fe.
  - If you are working closer to El Paso, TX, bring the employee to an El Paso location even if the jobsite is in New Mexico.

Appendix C

Witness Statement

Name		**DATE:**	
Employee #:		**Location:**	
PHONE:		**Supervisor**	

In your own words please describe the incident.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Note: All investigations are done with one goal in mind, how to protect People and Property from recurring injury, thank you for your help in making Affordable Solar safer for everyone!

Signature _____ **Date** _____

Appendix D

Initial DAMAGE report

For recording DAMAGE to property with no bodily harm. **DATE_____**

Employee name	Employee ID
Position	Supervisor
Phone number	Job Name

What Item was Damaged?

Were the police called? If yes, Police report number.

Was property belonging to other people damaged?

Describe the property.

Was damage caused by third party?

Was damage due to weather or natural forces?

Was clean up performed of damaged items?

At what location did the damage occur?

What time did the damage take place?

What task was being performed while the damage occurred?

Who was present when damage occurred?

What could be done to prevent the damage from happening again?

Can the damaged item be repaired?

What is needed to replace the damaged item?

Description of how the damage occurred.

Signature Date

Sketch of people, place, and things related to the incident

TITLE: INCIDENT INVESTIGATION, POLICY 003

PURPOSE: The purpose of this procedure is to establish a standard system for the INVESTIGATION of incidents involving Affordable Solar property, equipment, and employees.

INVESTIGATIONS will be conducted for the following reasons.

1. Injury/First Aid: incidents involving employee injury.
2. Equipment/Operational: incidents involving material handling equipment (forklifts, front-end loaders, cranes, tuggers, etc.).
3. Environmental: incidents involving hazardous material spills or releases (hydraulic fluid spill, Freon release, etc.).
4. Vehicular: incidents involving motor vehicles (rental cars and commercial vehicles used for work).
5. Fire.
6. Vandalism and Theft.
7. Near Miss: incidents in which an injury or adverse outcome was possible but did not occur.
8. Incidents involving non-Affordable Solar property, equipment, and/or personnel.

SCOPE: The information in this policy applies to all Affordable Solar Management, Supervisors, or Designee, oversight shall be managed by the ES&H Department.

RESPONSIBILITY:

- Management shall direct all personnel to participate and assist with any investigation, stressing that integrity and honesty is expected during the process.
- The Supervisor or Designee will be responsible for all follow-up actions resulting from an investigation.
- The Supervisor or Designee is responsible for notifying the ES&H department of any near miss situations within 24 hours of the event.
- The Supervisor or Designee is responsible for the completion of the incident report within 24 hours. The Supervisor or Designee must ensure that the incident report reaches Safety Dept. within 24 hours following the incident.
- All investigations shall be completed within a timely manner to allow for discussion, action items, and resolution as needed.

PROCEDURE:

In case of emergency-dial 911

- Employees are to report all identified unsafe conditions, unsafe actions, and work-related incidents to their supervisor as soon as safely possible.
- Employees are to report all work-related incidents resulting in first aid or injury to their Supervisor immediately. Failure to report any incident may result in the denial of claims under workman's comp law.
- Employees must report all near misses to their supervisor immediately. Near misses identify symptoms of bigger problems and must be corrected before an injury or property damage occurs.
- The Supervisor or Designee will notify the Manager and Safety Dept of all work-related incidents immediately.
- The ES&H person will start the investigation process by informing affected employees of the need for witness statements, site plans, and descriptions of the incident.
- All reporting directives from the reporting policy 002 shall be followed first. This investigation policy 003 is in addition and separate from reporting.

- No blame shall be assessed during the investigation. The purpose of an investigation shall be to prevent the event from happening again.
- A root cause shall be identified by all investigations. All root causes will be discussed by Management and ES&H. A full report with recommendations for mitigation will follow the discussion as part of the corrective actions.
- Upper Management shall have full access to all investigation documents and statements.
- Supervisors and designees will have ES&H accompanied access to the investigation documents. Non-management employees will not have access to any documents due to release of information restrictions.
- Violation of any item of this policy will result in a disciplinary action up to and including termination.

APPENDICES:

Appendix E – Affordable Solar Investigation Form

Appendix E

affordable solar
commercial | government

ACCIDENT/INCIDENT INVESTIGATION REPORT

To be completed by Management, Supervisor, or ES&H personnel.
Turn in this report to ES&H within 24 hours.

GENERAL INFORMATION Complete *this section for all accidents/incidents.*

Injury Equip/Operational Environmental Near Miss Non-Medical Vehicular Fire Theft

Lost Time/# of Days

NAME OF EMPLOYEE			BEGINNING DATE
EMPLOYER (Address if other than Affordable Solar)			ENDING DATE
EMPLOYEE'S BIRTHDATE			CLASSIFICATION
EMPLOYEE'S SUPERVISOR		PHONE #	AGE: SEX: M F
DATE OF ACCIDENT	TIME OF ACCIDENT	LOCATION	CITY
WITNESSES			
WERE PICTURES TAKEN? NO YES	IF YES, HOW MANY?	BY WHOM?	

OPERATIONAL - VEHICULAR/EQUIPMENT INCIDENT INFORMATION ONLY

DRIVER'S LICENSE #	TYPE OF CERTIFICATION	EXPIRATION DATE
VEHICLE/EQUIPMENT #	TYPE OF VEHICLE	LICENSE PLATE #

DID OPERATOR RECEIVE TRAFFIC CITATION? NO YES UNKNOWN

DID THE OTHER OPERATOR RECEIVE TRAFFIC CITATION? NO YES UNKNOWN

WAS THE ACCIDENT PREVENTABLE BY DRIVER/OPERATOR? NO YES

WAS DOD SURPLUS PROPERTY INVOLVED? NO YES IF YES, TYPE: DTID:

WAS NON-DOD SURPLUS PROPERTY INVOLVED? NO YES IF YES, TYPE:

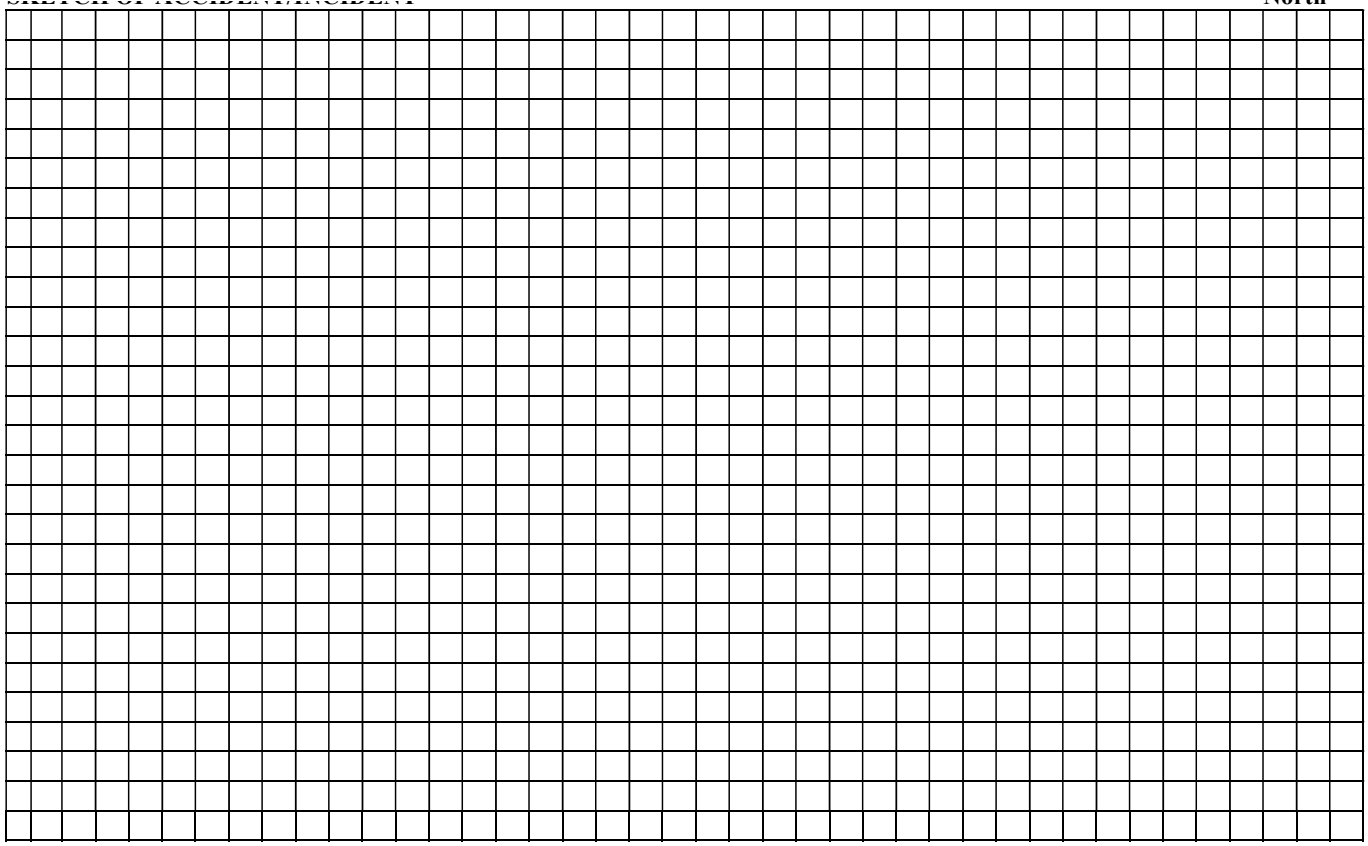
OWNER'S NAME (Non-Affordable Solar property)	OPERATOR'S NAME (Non-Affordable Solar property)	
PHONE #	LICENSE #	STATE

WRITTEN DESCRIPTION OF ACCIDENT/INCIDENT *Who, what, when, where, why and how?*

(B USE ACK OF FORM TO COMPLETE IF NECESSARY)

SKETCH OF ACCIDENT/INCIDENT

North



SIGNATURE OF INVESTIGATOR

Printed Name and Title	Signature	Date

COPIES TO: EH&S Manager, and Dept. Manager

Root cause and model used for interpretation.

Instructions for Completing the Affordable Solar Accident/Incident Investigation Report, Appendix E

I. GENERAL INFORMATION

This form is to be completed by Management only.

1. **Type of Accident:** Place a check in the box corresponding with the correct type of accident.
   - Injury/First Aid: Incidents in which an employee is injured
   - Equipment/Operational: Incidents involving Affordable Solar operated equipment (e.g., forklifts)
   - Environmental: Incidents involving chemical spills or releases
   - Near Miss: Incidents in which an injury or damage to property was avoided but possible
   - Vehicular: Incidents involving personnel vehicles (e.g., rental cars)
   - Fire: Incidents involving fire
   - Theft: Incidents involving theft or attempted theft

   Note: If the Incident is more than one type, then multiple boxes may be checked.

2. **Name of Employee:** The name of the employee involved in the incident. If more than one employee is involved, an incident report must be filled out for each employee.

3. **Employer:** If the employee is an Affordable Solar employee, simply put "Affordable Solar ." If the employee is a temp, then place the temp agency's name and address in this block.

4. Employee's Birth **date:** The date of birth of the involved employee.

5. **Classification:** The job title of the involved employee. For temp employees, put the job title for which they were performing job functions. (e.g., warehouse specialist, etc.)

6. **Employee's Supervisor**: The name of the employee's supervisor. For temporary employees, put the name of the Affordable Solar employee who is acting as their supervisor.

7. **Phone #:** Best Phone number to reach employee at.

8. **Age & Sex:** Age and sex of involved employee.

9. **Date of Accident:** The date in which the incident occurred.

10. **T**ime of accident: The time at which the incident occurred. If the time is estimation, write "approximately" or "approx." in the provided space.

11. **Location:** The Affordable Solar site at which the accident occurred.

12. **City:** The City and State in which the accident occurred.

13. **Witnesses:** List all people who witnessed the incident. Be sure to get written statements from all witnesses listed.

14. **Were pictures taken?** Check whether or not pictures are taken, write who took them, and put down how many were taken. Pictures should always be taken in cases involving injury and property damage. Pictures of chemical spills should be taken **AFTER** the spill is contained (do not put yourself in danger to take pictures).

II. OPERATIONAL-VEHICULAR/EQUIPMENT INCIDENT INFORMATION

1. Driver's License #: If the incident involved an over-the-road motor vehicle, such as a rental car, put down the involved employee's driver's license number.

2. **Type of Certification:** List the type of certification the involved employee has that authorizes him to operate the equipment that was involved in the incident. (For example, if the involved employee was authorized to drive a 15K forklift, place that in this space. This will help in the investigation if the employee was authorized for a 15K but driving a 25K)

3. **Expiration Date:** The expiration date of the type of certification of the involved employee. See #2.

Instructions for Completing the Affordable Solar Accident/Incident Investigation Report

4. **Vehicle/Equipment #:** The vehicle or equipment number of involved equipment, if applicable.

5. **Type of Vehicle:** The type of vehicle involved in the incident.

6. **License Plate #:** The license plate number of any over-the-road motor vehicles that were involved in the incident.

7. **Did the operator receive a traffic citation?**
   - Yes, if a citation was given to the involved employee by an officer of the federal, state, local authorities.
   - No, if no citation was given or if this question is not applicable to the incident.

8. **Did the other operator receive a traffic citation?** (for incidents involving Affordable Solar personnel and Non-Affordable Solar personnel)
   - Yes, if a citation was given to the other operator by an officer of the federal, state, local authorities.
   - No, if no citation was given or if this question is not applicable to the incident.

9. **Was the accident preventable by driver/operator?** (applies to Affordable Solar employees only)
   - Yes, if evidence shows that steps could have been taken to avoid the incident. (this is **NOT** an opinion question)
   - No, if evidence shows that any steps taken to avoid the incident would have failed.

10. **Was Affordable Solar property involved?**
    - Yes, if the Affordable Solar property was involved in the incident. For the purposes of this report only, sold property is considered Affordable Solar property until it leaves the site.
    - No, if non-Affordable Solar property was involved in the incident.

11. Owner's Name (Non-**Affordable Solar Property)**

12. Operators Name (Non-**Affordable Solar property):** The operator's name of any non-Affordable Solar property that was involved in the incident.

13. **Phone #:** The non-Affordable Solar property owner's phone number.

14. **License #:** The non-Affordable Solar property operator's driver's license number.

15. **State:** The state which issued the driver's license to the non-Affordable Solar property operator.

III. WRITTEN DESCRIPTION OF ACCIDENT/INCIDENT

1. **Who, what, when, where, why, and how?**
   - Write a full description of the incident, making sure all of these questions are answered. Be as specific as possible and use the space provided on the second page if necessary. This space is for the investigator's findings, so written statements should be on separate pages and not written in this section. Questions should be directed to the EH&S Director.

2. **Root Cause(s) of this Accident/Incident**
   - Root cause shines a light on deficiencies that may not be readily noticeable on a day to day basis. By evaluating the entire worksite and all involved, a root cause can be identified, once identified, modifiers and barriers can be put in place to prevent future incidents. Questions should be directed to the EH&S Dept.

3. **Actions Taken, with Completion Dates, to Prevent Recurrence**
   - Detail what steps are being taken to prevent another occurrence of this incident. Give completion dates and responsible parties for all listed actions.

4. **Sketch of Accident/Incident**
   - Sketch the scene to document the "big picture" of how the incident happened.

IV. SIGNATURE OF INVESTIGATOR

1. Once the investigation is completed, print your name and title, then sign and date in the spaces provided.
2. Make sure that copies of the completed investigation are sent to the EH&S Manager and Dept. Manager.

EH&S OPERATING POLICIES AND PROCEDURES

Affordable Solar

TITLE: MODIFIED DUTY FOR WORK RELATED INJURIES POLICY 004

PURPOSE: to aid workers with recovery or after care following an incident.

Affordable Solar workers' compensation benefit has several goals:

- To provide employees with access to quality medical care for work-related injuries.
- To speed recovery through the use of modified duty and return injured employees to full duty as soon as possible.

SCOPE: The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY:

- Supervisors or Designee will provide modified duty to accommodate return to work restrictions for employees who were injured at work.
- Employees are responsible for obtaining and providing a return to work release from the medical provider before they can return to work.
- Employees are responsible for providing an updated return to work release and physician's notes to the Supervisor and the EH&S Dept. after each visit to the physician during the recovery process.

PROCEDURE:

Employees injured due to a work-related incident will be provided with duties that meets physical limitations established by a physician.

1. The employee must provide the Supervisor or Designee with a return to work release before returning to work. The return to work release may return the employee to work full-duty or modified duty. Modified duty places restrictions on the tasks (e.g., limits on how much you can lift, how long you can sit or stand, use of your hands, etc.) the employee is capable of doing in the course of their work.

2. If an employee is returned to work modified duty, Affordable Solar will make every effort to find work within the restrictions specified by the medical provider.

3. As the employee recovers, the medical provider will periodically evaluate the employee's recovery progress and will update the restrictions. As this occurs, Affordable Solar will match the task with the ability of the employee.

4. During the recovery process, the employee will provide the Supervisor and EH&S Dept. with updated return to work evaluations.

EH&S OPERATING POLICIES AND PROCEDURES

Affordable Solar

TITLE: EMPLOYEE SAFETY TRAINING POLICY 005

PURPOSE: To ensure the highest quality of work being performed by continuing to train our employees in the latest safety techniques available.

Employee safety training is an essential element of the Affordable Solar business operation. Employees need basic safety training on the tools, equipment, and skills used to perform their jobs in a safe manner. The intended outcome of employee safety training is a heightened awareness of safety rules and principles that will reduce any potential injury to Affordable Solar employees, customers, and visitors.

SCOPE: The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY:

- EH&S Department will provide, coordinate, and/or moderate employee safety training as deemed necessary based on their safety assessments.
- Supervisor will support and enforce safety training.
- Employees are expected to actively participate in the safety meetings.

PROCEDURE:

1. Supervisor or their Designee will guide new and temporary employees through the Affordable Solar Safety Orientation.
2. Supervisor will complete the Safety Orientation Checklist and place it in the employee file.
3. Supervisor or their Designee will provide safety training for each piece of material handling equipment and or devices that the employee may be required to use.
4. Supervisor or their Designee will conduct safety meetings for all employees.
5. the trainer in charge will document the training on the Safety Training Form and forward it to the ES&H Department.
6. Supervisor will maintain a file of each safety meeting.

APPENDIX:

Appendix F - Safety Training Form

EH&S OPERATING POLICIES AND PROCEDURES

Affordable Solar

Appendix F

SAFETY TRAINING FORM

Trainer:_____ **Date:**_____

Topic:_____

Attendee Names and Signatures:

These signatures indicate that these employees have completed training in the topic listed above:

Trainer Signature_____

(Attach any training materials used during the session.)

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: EMPLOYEE WARNING NOTICE FOR SAFETY VIOLATIONS POLICY 006

Replaced by Disciplinary Policy for Safety Violations #009

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Replaced by Disciplinary Policy for Safety Violations #009

EH&S OPERATING POLICIES AND PROCEDURES
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Appendix G

EMPLOYEE SAFETY VIOLATIONS WARNING FORM

Employee Name: _____Date of Warning: _____

Location: _____

TYPE OF VIOLATION

Failure to follow instructions: _____
Carelessness willful damage to material/equipment: _____
Violation of Company Policy or Procedures: _____
Other: _____

PREVIOUS:

	ORAL	WRITTEN	DATE	BY WHOM
1st Warning				
2nd Warning				

Employer Statement:

Date of Incident: / / Time: am/pm

Employee Statement: I agree /disagree

Action to be taken:

____Warning ____Suspension _____Dismissal ____Other
Consequence should incident occur again:

I have read this Employee Warning Notice and understand it.

Signature of Employee Date

Signature of Supervisor Issuing the Warning Date

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: PERSONAL PROTECTIVE EQUIPMENT (PPE) POLICY 007

PURPOSE: To provide an administrative barrier of protection policy instructing employees to use PPE against hazards that cannot be mitigated away fully or are unrecognizable until they pose a risk.

Affordable Solar shall furnish to each of its employees' employment and a place of employment which is free from recognized hazards that can cause death or serious physical harm to its employees. Each Affordable Solar employee shall comply with all applicable occupational safety and health standards and rules, regulations. Therefore, Affordable Solar shall ensure that personal protective equipment (PPE) for eyes, face, head, and extremities is provided, used, and maintained in reliable condition whenever it is necessary by reason of workplace hazard, which may cause injury or impairment of body function through impact or physical contact. This program defines the safety requirements as they pertain to personal protective equipment. Affordable Solar PPE program is written to comply with the OSHA Personal Protective Equipment Standard 29 CFR §1910.132-138 Subpart I.

SCOPE:

This PPE program applies to all Affordable Solar personnel and visitors in applicable facilities and Affordable Solar operations. PPE is designed to protect the employees from health and safety hazards that cannot practically be removed from the work environment. It is the last means of defense. PPE should be used only when the hazards cannot be eliminated through engineering and/or administrative controls.

DEFINITIONS:

- Goggle is a device, with contour-shaped eyecups or facial contact with plastic lenses, worn over the eyes for protection of the eyes and eye sockets.
- Safety Glasses is a protective eyewear with side shields made of thick shatter resistant plastic that shield the eyes from flying debris.
- Hardhat is a rigid device worn to provide protection for the head against impact, flying particles, or electric shock, or any combination thereof, which is held in place by a suitable suspension.
- Suspension – is the internal cradle of the helmet which holds it in place on the head and is made up of headband and crown straps.
- Safety-toe boots/safety boots are durable boots made of leather or rubber that have a composite reinforcement in the toe to protect the foot against falling objects.
- High Visibility Vest is made of highly reflective neon material worn over clothes and used in places where workers need greater visibility due to inclement weather or work in approaching MHE traffic areas.
- Employee – for the purposes of the PPE program an employee is any person who receives compensation for work performed at Affordable Solar assignments.
- Job Hazard Analysis (JHA) is a technique that focuses on job tasks as a way to identify hazards before they occur. The JHA focuses on the relationship between the worker, the task, the tools, and the work environment.
- Personal Protective Equipment (PPE) is designed to protect individuals from workplace hazards, which may cause injury or impairment of body function through absorption, or physical contact (e.g., gloves, eye protection, safety boots, and head protection).

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

- Personal Protective Equipment Plan is a written program developed and implemented which sets forth procedures to provide, use and maintain PPE in reliable condition whenever it is necessary by reason of workplace hazard.

1. RESPONSIBILITY:

1.1. Supervisors:

1.1.1. Supervisors and the employee who performs the job shall evaluate anticipated work conditions via a Job Hazard Analysis (JHA) in their respective areas to determine what, if any, PPE is required to protect the worker while performing his/her job duties.

1.1.2. The JHA should be a commonsense approach based on observation of existing work practices, hazards, and knowledge of PPE requirements. EH&S Staff is available to provide technical assistance.

1.1.3. Identification of hazards includes consideration of the following basic hazard categories:

1.1.3.1. Impact
1.1.3.2. Compression (pinch points)
1.1.3.3. Chemical

1.1.4. Once work place hazards have been identified and consideration given to the nature of the hazards and potential for exposure to multiple hazards, the Supervisor or their designate shall make a decision concerning the type of PPE to be selected and purchase the following PPE accordingly:

1.1.4.1. Hard hats
1.1.4.2. High visibility vests
1.1.4.3. Safety glasses
1.1.4.4. Flash protective gear
1.1.4.5. Goggles
1.1.4.6. Gloves

1.1.5. Work boots shall be required at Affordable Solar.

1.1.6. Jobs where exposure conditions have changed shall be re-evaluated by the Site Mangers or their designate and the employee performing the job to determine PPE needs.

1.1.7. Job Hazard Analysis must be performed as follows:

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

1.1.7.1. Upon Contract completion, before work begins.
1.1.7.2. Whenever work conditions change, or employee is reassigned to perform other duties
1.1.7.3. On annual basis

1.1.8. Supervisor or their designate and the employee must document JHA in writing using JHA form.

1.1.9. Supervisor or their designate must train employees in the proper use of PPE. (see section # 8 for specific training requirement)

1.1.10. Supervisor must ensure that appropriate PPE is always worn by employees.

1.1.11. Supervisor must review how PPE is issued and keep records to control equipment misuse, and any equipment deficiencies. Once PPE is found to be deficient, it must be taken out of service. Before the employee can resume work, he/she must be issued working PPE that is able to provide the minimum safety protection for the employee.

1.1.12. Supervisor will replace, at no charge to the employee the following provided PPE which is defective or damaged in use:

1.1.12.1. Hard hat
1.1.12.2. Safety glasses
1.1.12.3. Safety Goggles
1.1.12.4 Gloves as required by task
1.1.12.5. High Visibility Vests

1.2. Employees

1.2.1. All Affordable Solar employees at affected areas of operation will be required to understand and properly wear the provided PPE when work assignment or operations present the risk of exposure to observed or potential hazards.

1.2.2. Employees are responsible to inspect the provided PPE each day before the start of their shift. Employees shall notify their Supervisor if, upon inspection the provided PPE is found to be defective or damaged. Employees shall not perform any work duty that requires PPE until the defective or damaged PPE is replaced with properly working PPE.

1.2.3. Employees are responsible for the safekeeping and maintenance of the personal protective equipment.

1.2.4. Employees shall inform their supervisor whenever a need arises to use PPE for which the employee has not received training, or when a condition exists where adequate PPE is not available.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

1.3. Environmental Health and Safety Department (EH&S)

1.3.1. EH&S shall be responsible for the overall design and administration of the PPE program.

1.3.2. EH&S shall on yearly basis review and evaluate the PPE program and make changes as required.

2. PPE Selection

2.1. Selection of PPE shall be based upon provision of a level of protection greater than the minimum required to protect the exposed employee from the potential or observed hazards.

2.1.1. Eye and Face Protection

2.1.1.1. Where eye and face protection are required the selected protection shall be adequate to protect against machines or operations, which create the risk of eye or face due to physical or chemical agents.

2.1.1.2. The following personnel shall be required to wear safety glasses as means of personal protective equipment:

2.1.1.2.1. All personnel.
2.1.1.2.2. Anyone walking or working in the work area.
2.1.1.2.3. Customers entering the work area.
2.1.1.2.4. All other visiting personnel.

2.1.1.3. The following personnel shall be required to wear goggles and face shields:

2.1.1.3.1. All personnel engaged in demolition saw or asphalt cutting operations.

2.1.1.4. Hazards associated with the potential for flying objects shall utilize eye protection with side shields.

2.1.1.5. Eye and face protection must comply with ANSI Z87.1-1989 (R1998) standards.

2.1.1.6. Personnel who are required to wear safety eyewear and need prescription lenses to conduct their work shall be provided with protective eyewear that can be worn over the employee's prescription lenses

3. Head Protection

3.1.1. Employees working in areas where there is the possible danger of head injury from the impact of falling or flying objects, striking against objects, or any combination of these hazards will be protected by protective hard hats.

3.1.2. The following personnel shall be required to wear head protection:

3.1.2.1. All personnel.
3.1.2.2. Anyone walking or working in the work area.
3.1.2.3. All visiting personnel.

3.1.3. All head protection shall comply with the specifications contained in ANSI Z89.1-1997.

3.1.4. ANSI Z89.1-1997 breaks protective headwear into the following classes:

3.1.4.1. Class A helmets provide impact, penetration resistance and electrical protection up to 2,200 Volts.
3.1.4.2. Class B helmets provide impact, penetration resistance and electrical protection up to 20,000 Volts.
3.1.4.3. Class C helmets provide only impact and penetration resistance.

Affordable Solar Inc Employees shall use class B hard hats with no exceptions. No other type or designation of hard hat is authorized.

3.1.5. Bump caps are not recognized by OSHA, ANSI or Affordable Solar for general exposure and are not a valid form of head protection under this program.

3.1.6. Hard hats may not be altered in a way that will reduce their efficiency. Typical prohibited alteration include painting, drilling holes in the shell, application of metal jewelry, etc. Hats with these alterations or excessive scratches will be replaced.

4. Foot Protection

4.1. Employees who are exposed to hazards that may cause foot injuries due to falling or rolling objects, objects piercing the sole, wetness, slipping or any combination thereof identified by the JHA, shall be required to use safety footwear.

4.2. All protective footwear shall comply with ANSI Z41-1999.

4.3. The following employees shall be required to wear protective footwear:

4.3.1. All Affordable Solar personnel performing job related duties outside the scope of corporate office setting.
4.3.2. All personnel visiting work area.
4.3.3. Anyone walking through work area.

4.4. All protective footwear shall have the following features to be used on ASI field locations:
4.4.1. Six (6) inch upper height, the boot upper must be over the ankle.
4.4.2. Must have a defined heal with tread for traction and support. No slick bottom boots.
4.4.3. Boots must be in good condition with no rips or tears on the toes, must have good tread and no openings that allow direct penetration to the foot.
4.4.4. If performing a task that requires toe or shank protection it shall be in the form of composite protection. Steel toes and shanks conduct electricity and are not allowed in our profession.
4.4.5. In order to be included in the boot repayment program, the old pair of boots will need to be turned in for conformation that new boots are needed. This does not apply to the first pair for a new hire.

5. Body Protection

5.1. Employees working with chemicals or materials that can cause damage to the skin or that can be absorbed through the skin shall be provided with appropriate protective clothing (i.e. acid aprons for checking water levels on batteries).

5.1.1. Clothing must be suitable for both the weather and the work, and shall include at

minimum:

5.1.1.1. A shirt with at least a 4" sleeve is required.
5.1.1.2. If working with chemicals, a full length chemical resistant sleeve is required.
5.1.1.2. Full-length trousers in good condition with no holes, tears, or rips. No sagging or low riding pants that may allow for contamination.

6. Hand Protection

6.1. Hand protection must be selected, provided and worn when employees are exposed to hazards such as skin absorption of harmful substances or chemical burns, energized electrical equipment and sharps.

6.2. The Job Hazard Assessment will define when hand protection must be used, and the type of glove required.

7. High Visibility Vests

7.1. High visibility vests have been identified as an additional form of protection necessary at Affordable Solar. The minimum level of vest shall be a level 3 vest with reflective markings.

7.2. The following personnel shall be required to wear high visibility vest when performing work related duties at all job sites:

7.2.1. Affordable Solar operations employees, sub-contractors, temporary personnel, visitors, (any personnel on ASI project site)

8. Training

8.1. The Supervisor or designate shall provide training/retraining to each employee who is required to use PPE for his/her job function.

8.1.1.Each employee shall be trained to know and understand the following:

8.1.1.1. When is PPE necessary?
8.1.1.2. What PPE is necessary?
8.1.1.3. How to don or put on the PPE.
8.1.1.4. How to doff or remove the PPE.
8.1.1.5. Limitations of the PPE.
8.1.1.6. Proper maintenance of PPE.
8.1.1.7. Useful life of PPE.
8.1.1.8. Proper disposal of PPE.

8.2. Each employee required to wear PPE must demonstrate his/her understanding of the training elements listed above, before being allowed to perform work requiring the use of PPE.

8.2.1. The Supervisor or their designate must provide training as follows:

8.2.1.1. Upon an employee's initial assignment to a work area or an activity that requires PPE.
8.2.1.2. When changes in the workplace render previous PPE training obsolete.
8.2.1.3. When there are changes to the selected types of PPE, which render previous training obsolete.

8.2.1.4. When Employees no longer demonstrate proficiency with their assigned PPE.

11. Recordkeeping

11.1. The Supervisor or designate must verify through written certification that all areas under his/her jurisdiction have been assessed for hazards requiring PPE. This certification shall contain the location of the assessment, the date and the job title of the job assessed.

11.2. The Supervisor or designate shall verify that each employee who is required to wear PPE, has received and understood the required training listed in Section # 8.

11.3. Training Records shall include:

11.3.1. Date of training session
11.3.2. Site name and location
11.3.3. Employee Job Title
11.3.4. Employee Signature
11.3.5. Supervisor Signature

11.4. Training records shall be maintained at each site and available for inspection.

12. Appendices:

Appendix H - Job Hazard Analysis
Appendix I - Personal Protective Equipment Notification/Training acknowledgment

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar
HAZARD ASSESSMENT CERTIFICATION FORM

APPENDIX H

Date:	Site name:
Assessment Conducted by :(supervisor name)	
Task Name: (print)	
Task related to which construction point? (print)	

Hazard Assessment and Selection of Personal Protective Equipment

1. **Overhead Hazards** –

   Hazards to consider include:
   - Suspended loads that could fall
   - Overhead beams or loads that could be struck
   - Sharp objects or corners at head level
   - Crane operations

Hazards Identified:

Head Protection

Hardhat	Yes ☐	No ☐
○ **Type B** (impact and penetration resistant, plus high-voltage electrical insulation)		

2. **Eye and Face Hazards** –

   Hazards to consider:
   - Chemical splashes
   - Dust
   - Projectiles
   - Scrap yard operations

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Hazards Identified:

Eye Protection

Safety Glasses	Yes □	No □
Safety Goggles	Yes □	No □
Face Shields	Yes □	No □

3. **Hand Hazards** –

Hazards to consider
- ☒ Chemical

Hazards Identified:

Hand Protection

○ **Standard leather or foam palm**	Yes □	No □
○ **Impact resistant**	Yes □	No □
○ **Chemical Resistant**	Yes □	No □

4. **Foot Hazards** –

Hazards to consider include:
- ☒ Heavy material handled by employees
- ☒ MHE operation
- ☒ Sharp edges pr points (puncture risk)
- ☒ Slippery conditions
- ☒ Wet Conditions

Hazards Identified:

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Foot Protection

Safety Shoes	Yes □	No □
Types:		
☒ Toe Protection	□	□
☒ Metatarsal protection	□	□
☒ Puncture Resistant	□	□
☒ Electrical Insulation	□	□
☒ Other (Explain)	□	□

5. <u>Body protection</u>

Hazards to consider include:
☒ Low visibility

Hazards Identified:

Body protection

High Visibility Vest	Yes □	No □

6. <u>Other Identified Safety and/or Health Hazards</u> –

Hazards Identified:

Recommended Protection:

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX I

APPENDIX I

PERSONAL PROTECTIVE EQUIPMENT TRAINING
CERTIFICATION

Site _____ Date _____

Employee Name _____

Employee Job Title _____

Note: A Job Hazard Analysis for the Job Title and Site(s) for this employee must be attached.

EMPLOYEE:

I hereby certify that I have been trained by my supervisor on the hazards associated with my job. My supervisor has instructed me in the following areas in accordance with OSHA Standard 1910.132:

- What PPE is necessary
- When PPE is necessary
- How to properly put on, remove, adjust, and wear PPE
- Limitations of PPE
- The proper care, maintenance, useful life, and disposal of the PPE

_____ _____
Employee Signature Date

SUPERVISOR:

I hereby certify that I have trained the above-named employee on the hazards associated with the requirements and duties of his/her job. I also certify that I have instructed the above-named employee in the following areas in accordance with OSHA Standard 1910.132:

- What PPE is necessary
- When PPE is necessary
- How to properly put on, remove, adjust, and wear PPE
- Limitations of PPE
- The proper care, maintenance, useful life, and disposal of the PPE

_____ _____
Supervisor Signature Date

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

I, _____ (Supervisor name) certify that the above inspection was performed to the best of my knowledge and ability, recommended PPE is based on the hazards present at this time.

_____ (Supervisor Signature) _____
(Date)

I, _____ (Emp. Name) certify that the above inspection was performed and the job hazards and PPE requirements were explained to me in detail. I have been given the chance to ask questions, and the answers are to my satisfaction.

_____ (Emp. Signature) _____
(Date)

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: RESPIRATORY PROTECTION PROGRAM POLICY 008
(OSHA 29 CFR 1910.134; ANSI Z88.2-1992)

PURPOSE: The purpose of this program is to ensure that proper respiratory protection is provided and used, when necessary, to protect the health of all employees from respiratory hazards. Respirators are to be use only where the engineering control of inhalation hazards is not feasible, while engineering controls are being installed, or in emergencies.

SCOPE:

The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY:

The EH&S department is responsible for overall implementation, management and support of out Respiratory Protection Program. This includes:

1. Procedures for selecting respirators for use in the workplace;
2. Medical evaluation of employees required to use respirators;
3. Fit testing procedure for tight fitting respirators;
4. Procedures for proper use of respirators in routine and reasonably foreseeable emergency situations;
5. Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding and otherwise maintaining respirators;
6. Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere supplying respirators;
7. Training of employees in the reparatory hazards to which they are potentially exposed during routine and emergency situations;
8. Training of employees in the proper use of respirators, including putting on and removing them, any limitations on their use and their maintenance; and
9. Procedures for regularly evaluating the effectiveness of the program.

The employees who use respirators are responsible for:
1. Using them in accordance with the instructions and training received;
2. Properly inspecting respirators before each use;
3. Cleaning and storage after each use;
4. Immediately reporting any malfunction or defect of their respirator to their supervisor or the company safety director or designee;
5. Ensuring that facial hair, which can come between the sealing surface of the face piece and the face or that interferes with the valve function, is not present.

Selection of respirators:
The Director of the EH & S department or designated person will select only respirators that are certified by the National Institute for Occupational Safety and Health (NIOSH) which must be used in compliance with the conditions of its certification.

The Director of EH & S department or designee will identify and evaluate the **respiratory**

hazards in the workplace, including a reasonable estimate of employee exposures and identification of the contaminant's chemical state and physical form. Where exposure cannot be identified or reasonably estimated, the atmosphere shall be considered immediately dangerous to life or health (IDLH).

Respirators for IDLH atmospheres:

1. Approved respirators:

A. Full face piece pressure demand self-contained breathing apparatus (SCBA) certified by NIOSH for minimum service life or thirty minutes, or B. Combination full facepiece pressure demand supplied-air respirator (SAR) with auxiliary self-contained air supply.

2. All oxygen-deficient atmospheres (less than 19.5% 02 by volume) shall be considered IDLH. IDLH conditions require an oxygen supplying respirator such as an SCBA.

Respirators for non-IDLH atmospheres:

(1) respirator is equipped with an end-of-service life indicator (ESLI) certified by NIOSH for the contaminants, or (2) if there is no ESLI appropriate for conditions of employer's workplace, the employer implements a change schedule for canisters and cartridges that will ensure that they are changed before the end of their service life and describes in the respirator program the information and data relied upon and basis for the change schedule and reliance on the data.

For **protection** against particulate ASI shall provide:

An air-purifying respirator equipped with high efficiency particulate air (HEPA) filters certified by NIOSH under 30 CFR Part 11 or with filters certified for particulates under 42 CFR Part 84; or C. An air-purifying respirator equipped with any filter certified for particulates by
NIOSH for contaminants consisting primarily of particulates with mass median aerodynamic diameters of at least 2 micrometers.

E. Medical Evaluation

EH& S department must provide a medical evaluation to determine employee's ability to use a respirator before fit testing and use.

EH& S department must identify a physician or other licensed health care professional (PLHCP) to perform medical evaluations using a medical questionnaire or an initial medical examination that obtains the same information as the medical questionnaire (information required is contained in mandatory Appendix C).

EH&S department must obtain a **written** recommendation regarding the employee's ability to use the respirator from the PLHCP.

Additional medical evaluations are required under certain circumstances,

e.g.: Employee reports medical signs or symptoms related to ability to use

respirator; PLHCP, program administrator, or supervisor recommends

evaluation;

Information from the respirator program, including observation made during fit testing and program evaluation, indicates a need; or Change occurs in workplace conditions that may substantially increase the physiological burden on the employee.

Annual review of medical status is not required.

Fit Testing

All employees using a negative or positive pressure tight-fitting facepiece respirator must pass an appropriate qualitative fit test (QLFT) or quantitative fit test (QNFT). Fit testing is required prior to initial use, whenever a different respirator facepiece is used, and at least annually thereafter.
An additional fit test is required whenever the employee reports, or the employer or PLHCP makes visual observations of, changes in the employee's physical condition that could affect respirator fit (e.g. facial scarring, dental changes, cosmetic surgery, or an obvious change in body weight).

The fit test shall be administered using as OSHA-accepted QLFT or QNFT protocol, as contained in mandatory Appendix A to 29 CFR 1910.134.

Use of Respirators

Tight-fitting respirators shall not be worn by employees who have facial hair or any condition that comes between the sealing surface of the facepiece and the face or that interferes with valve function.

Personal protective equipment shall be worn in such a manner that does not interfere with the seal of the facepiece to the face of the user.

Employees shall perform a user seal check each time they put on a tight-fitting respirator using the procedures in mandatory Appendix B-1 (29 CFR 1910.134) or equally effective manufacturer's procedures.

Procedures for respirator used in IDLH atmosphere are stated. In addition to these requirements,
interior structural firefighting requires the use of SCBAs and a protective practice known as "2- in/2-out"--at least two employees must enter and remain in visual or voice contact with one another at all times, and at least two employees must be located outside. (Note that this is not meant to preclude firefighters from performing emergency rescue before an entire team is assembled.)

Maintenance and Care Respirators

Respirators must be cleaned and disinfected using the procedures in Appendix B, or equally effective manufacturer's procedures at the following intervals:

1. As often as necessary to maintain a sanitary condition for exclusive use respirators.
2. Before being worn by different individuals when issued to more than one employee.
3. After each use for emergency use respirators and those used in fit testing and training.

Identification of Filters, Cartridges, and Canisters

All filters, cartridges and canisters used in the workplace must be labeled and color coded with the NIOSH approved label.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

The label must not be removed and must remain legible.

Training and Information

The EH &S department must provide effective training to respirator users, including:

1. Why the respirator is necessary and how proper fit, use, or maintenance can compromise the protective effect of the respirator.
2. Limitations and capabilities of the respirator.
3. Use in emergency situations.
4. How to inspect, put on and remove, use and check the seals.
5. Procedures for maintenance and storage.
6. Recognition of medical signs and symptoms that may limit or prevent effective use.
7. General requirement of the Respirator Standard (29 CFR 1910.134) Training required prior to initial use, unless acceptable training has been provided by another employer
within the past 12 months.

Retraining required annually and when:

1. Workplace conditions change.
2. New types of respirators are used, or
3. Inadequacies in the employee's knowledge or use indicates need. 4. The basic advisory information in Appendix D, 29 CFR 1910.134 shall be provided to employees who wear
respirators when their use is not required by workplace atmospheric conditions or by the employer.

Program Evaluation

The EH & S Department must conduct evaluation of the workplace as necessary to ensure proper implementation of the program and consult with employees to ensure proper use.

Record keeping

Records of medical evaluation must be retained and made available per 29 CFR

1910.1020. A record of fit tests must be established and retained until the next fit test.

A **written** copy of the current program must be

retained.

Appendix D to Sec. 1910.134 (Mandatory) Information for Employees Using Respirators When Not Required Under the Standard.

Respirators are an effective method of **protection** against designated hazards when properly selected and worn. Respirator use is encouraged, even when exposures are below the exposure limit, to provide an additional level of comfort and **protection** for workers. However, if a respirator is used improperly or not kept clean, the respirator itself can become a hazard to the worker. Sometimes, workers may wear respirators to avoid exposures to hazards, even if the amount of hazardous substance does not exceed the limits set by OSHA standards. If your employer provides respirators for your voluntary use, or if you provide your own respirator, you need to take certain precautions to be sure that the respirator itself does

not present a hazard.

You should do the following:

1. Read and heed all instructions provided by the manufacturer on use, maintenance, cleaning and care, and warnings regarding the respirator's limitations.
2. Choose respirators certified for use to protect against the contaminant of concern. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will tell you what the respirator is designed for and how much it will protect you.
3. Do not wear your respirator into atmospheres containing contaminants for which your respirator is not designed to protect against. For example, a respirator designed to filter dust particles will not protect you against gases, vapors, or very small solid particles of fumes or smoke.
4. Keep track of your respirator so that you do not mistakenly use somebody else's respirator.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar
PROCEDURES Affordable Solar

TITLE: HAZARD COMMUNICATION (HAZCOM) PLAN
YOUR RIGHT TO KNOW POLICY 009

REFERENCE: 29 CFR 1910.1200

PURPOSE: The Occupational Safety and Health Administration (OSHA) require employers to develop a written plan to communicate with employees about the hazards of particular chemicals used in the workplace.

SCOPE:
The information in this Hazard Communication plan applies to all Affordable Solar employees who may be exposed to hazardous materials under normal workday conditions or during an emergency situation.

This written hazard communication plan is located in the Affordable Solar office and available for review by Affordable Solar employees.

RESPONSIBILITY:
It is the responsibility of Affordable Solar to:

- Provide work sites with a copy of the Affordable Solar Hazard Communication Plan
- Provide hazard communication training to new employees
- Verify that an annual chemical inventory is performed
- Verify that Material Safety Data Sheets are available for employee review

It is the responsibility of the Supervisor to:

- Complete the annual chemical inventory
- Update the Material Safety Data Sheets
- Select PPE to protect employees
- Require employees to use selected PPE
- Inform and train employees

It is the responsibility of the employee to use hazardous materials in a safe manner and use the PPE provided to them.

HAZARD COMMUNICATION PLAN

Table of Contents

1. OVERVIEW

The Hazard Communication Standards requires chemical manufacturers and importers to assess the hazards of the chemicals, which they produce or import. Affordable Solar must in turn provide information to its personnel about the hazardous chemicals to which employees are exposed by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

2. CONTAINER LABELING

The chemical manufacturer, importer, or distributor is required to have each container of hazardous chemicals leaving their workplace labeled, tagged or marked with the following information:

- Identity of the hazardous chemical;
- Appropriate hazard warnings, and
- Name and address of the chemical manufacturer, importer, or other responsible party.

Employees are not to work with any substance without proper authorization. Employees are directed to ask the site manager or designee to identify the associated hazards and information concerning proper use. The labels on incoming containers of hazardous chemicals are not to be removed or defaced.

3. MATERIAL SAFETY DATA SHEETS (MSDS)

Chemicals that may be received and stored are to have an accompanying material safety data sheet (MSDS). The copies of any MSDS that are received with incoming shipments of the sealed containers of hazardous chemicals shall be readily accessible during each work shift to employees when they are in their work area.

Affordable Solar employees are not to bring any hazardous chemicals or materials to the job site without first getting approval from their supervisor and obtaining the appropriate SDS.

Affordable Solar shall maintain in the workplace copies of the required SDS for each hazardous chemical, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area. The Supervisor is responsible for updating SDS upon the addition of new chemicals. Affordable Solar shall have a Safety Data Sheet in the workplace for each hazardous chemical stored or used.

If a product requiring a SDS is received without the accompanying SDS, then the Affordable Solar Supervisor is to call the manufacturer of that chemical and request a

SDS to be sent. The Supervisor is responsible to ensure that the required information can immediately be obtained in an emergency.

4. EMPLOYEE INFORMATION AND TRAINING:

Affordable Solar shall provide employees with information and training on hazardous chemicals in their work area at the time of their initial assignments, and whenever a new physical hazard or health hazard is introduced into their work area.

5. CHEMICAL INVENTORY

Affordable Solar will conduct an annual chemical inventory. Chemicals found during the inventory will be listed by name and manufacturer. The list can be found in the front of the SDS binder. Detailed information about the physical and health effects of each chemical is included in a Safety Data Sheet. Safety Data Sheets are readily available to employees in their work areas.

6. NON ROUTINE TASKS

Affordable Solar has not identified any non-routine tasks at this time.

7. OUTSIDE CONTRACTORS

It is the responsibility of the Supervisor to provide contractors and their employees with the following information if they may be exposed to hazardous chemicals in our workplace:

- the identity of the chemicals,
- how to review material safety data sheets,
- an explanation of the container, and

- safe work practices to prevent exposure.

The Supervisor will also obtain a Safety Data Sheet for any hazardous chemical a contractor brings into the workplace.

Appendix J – Chemical Inventory Sheet

APPENDIX J

CHEMICAL INVENTORY FOR YEAR: _____

SITE NAME AND LOCATION_____

CHEMICAL NAME	MANUFACTURER

Name and Title of Person Completing Inventory Date

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: FIRE SAFETY PLAN

POLICY 010

REFERENCE: 29 CFR 1910.38

PURPOSE:
OSHA standards require employers to provide proper exits, firefighting equipment, emergency plans, and employee training to prevent fire deaths and injuries in the workplace.

SCOPE:
The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY:
- It is the responsibility of the EH&S department to develop and distribute the fire plan to all Affordable Solar employees.
- It is the responsibility of the Supervisor to train all site employees in their site-specific fire safety plan.
- Supervisors are responsible for training employees in the use of fire extinguishers.
- Supervisors are responsible for training employees in the evacuation plan.
- Employees are responsible for following fire prevention rules at all times.
- Employees are responsible for giving special attention to all smoke and fire alarms.

FIRE SAFETY PLAN

Table of Contents

1. BUILDING AND PROJECT SITE EXITS

1.1. Each workplace must have at least two means of escape remote from each other to be used in a fire emergency.
1.2. Fire egress must not be blocked or locked to prevent emergency use when employees are within the buildings.
1.3. Exit routes from buildings or project sites must be clear and free of obstructions and properly marked with signs designating exits from the building or project site.

2. PORTABLE FIRE EXTINGUISHER

2.1. Each workplace building must have the proper type of fire extinguishers for the fire hazards present.
2.2. Employees expected or anticipated to use fire extinguishers must be instructed in the hazards of fighting fire, how to properly operate the fire extinguishers available, and what procedures to follow in alerting others to the fire emergency. Training will be provided by the Supervisor.
2.3. Portable fire extinguishers are to be maintained and inspected upon placement at site and inspected during weekly site walks. An outside company will inspect all fire extinguishers annually.
2.4. Portable fire extinguishers on the Material Handling equipment are to be maintained and

inspected monthly.

2.5. Employees shall know the location of fire extinguishers in their work area.
2.6. Employees are required to be familiar use and practical application of portable fire extinguishers in their area.
2.7. All fire extinguishers should be conspicuously located and unobstructed.
2.8. Training on fire extinguisher use shall be given to new employees and on an annual basis as part of the weekly safety meeting.

3. EMERGENCY EVACUATION PLAN

3.1. Take prompt action if a fire should occur.
3.2. Sound the alarm.
3.3. Tell/alert others about the fire via voice communication or cell phone.
3.4. Do not fight a fire that is too large or dangerous.
3.5. Evacuation routes, assembly areas, and information regarding appropriate emergency telephone numbers must be posted and easily located.
3.6. Employees will meet in a pre-determined Affordable Solar assembly area.
3.7. Use stairways as an escape route in multi-story structures.
3.8. Never use elevators during a fire emergency.
3.9. The last person out of a room must close the door to prevent the fire from spreading.

4. FIRE PREVENTION PLAN

4.1. Smoking is prohibited in all Affordable Solar occupied buildings.
4.2. Oily rags must be stored in properly labeled covered metal containers for disposal in accordance with federal, state and site requirements.
4.3. Flammable and combustible liquids must be handled only in UL or FM approved and properly labeled safety cans.
4.4. Heat producing equipment must be properly maintained and kept clean of accumulations of flammable residues. Flammables are not to be stored close to these pieces of equipment.
4.5. Open flames are not allowed without hot work permit.
4.6. Never leave an extinguished fire unattended. Keep a fire watch until the fire department arrives.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: FIRST AID KITS

POLICY 011

REFERENCE: 29 CFR 1910.151

PURPOSE: To provide adequate first aid supplies to Affordable Solar employees while at any work location.

SCOPE:
The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITIES:
- The Supervisor or Designated person is responsible for ensuring that a first aid kit is available at the worksite and that each first aid kit is adequately equipped with supplies.
- An infirmary, clinic, or hospital is in near proximity to the workplace. First aid kits are provided for minor injuries not requiring medical treatment. Employees are responsible for providing their own first aid care.

PROCEDURE:
1. First aid kits are required at all Affordable Solar work sites.
2. First aid kits shall be conveniently located so that they are accessible to all Affordable Solar employees during work time.
3. The Supervisor or Designated person will inspect first aid kits at least annually to determine if it is adequately stocked.
4. Replacement supplies or first aid kits will be purchased through the Safety Department.
5. Employees shall report the need to use first aid supplies to the Supervisor and use sign out sheet.
6. When an injury requires treatment beyond basic first aid, employee and the supervisor will seek medical attention and/or treatment and will follow the procedures set forth on the Emergency Contact Information Form (EHSOP -3 Appendix - B)
7. The Supervisor or Designated person will complete an incident report for injury requiring first aid, injury requiring medical treatment or near miss if applicable.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: BLOODBORNE PATHOGENS – EXPOSURE CONTROL PLAN

POLICY 012

REFERENCE: 29 CFR 1910.1030

PURPOSE:
According to the concept of Universal Precautions, all human blood components, and other potentially infectious materials are treated and handled as if known to be infectious for HIV, HBV and other bloodborne pathogens. The purpose of this plan is to reduce the risk of occupational exposure to bloodborne pathogens, and/or other potentially infectious materials, and to provide a safe work environment to all employees in compliance with federal and state regulations.

SCOPE:
This plan covers employees who could, as a result of performing their job duties, come in contact with bloodborne pathogens and other potentially infectious materials. The only circumstance under which Affordable Solar employees are anticipated to come in contact with bloodborne pathogens and other potentially infectious materials are when rendering first aid and CPR or cleaning up after the accident.

TABLE OF CONTENTS

1 RESPOSIBILITY:

1.1 The EH&S Department is responsible for training employees in the hazards associated with bloodborne pathogens and the control measures available to reduce exposure.

1.2 The Supervisor or their Designees are responsible for ensuring that a bloodborne pathogen kit is available at the worksite and that the kit is adequately equipped with supplies.

1.3 Employees are responsible for becoming familiar with the contents of the bloodborne pathogen kit.

1.3.1 Employees are responsible for becoming familiar with proper use of the materials contained in the bloodborne pathogen kit.

1.3.2 First aid and CPR assistance is rendered by Affordable Solar employees on a completely voluntary basis.

1.3.3 Employees are responsible for understanding and complying with all phases of the Affordable Solar policies and procedures for situations involving bloodborne pathogens and other potentially infectious materials.

1.3.4 Employees with no formal first aid training must be instructed to maintain a

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

"hands off" practice in the event of an emergency. These employees should contact a first aid responder as quickly as possible.

2 PROCEDURES:

2.1 Supervisor or Designee will notify Manager and EH&S Dept of all incidents involving exposure to bloodborne pathogens or other potentially infectious materials.

2.2 Employees are to report all incidents involving exposure to the bloodborne pathogens or other infectious materials.

2.3 Supervisor or Designee must complete and incident report (SOP-3 Appendix A) and Exposure Incident Form (SOP – 10 Appendix D)

2.4 Procedures described in this policy apply as follows:

2.4.1 To all employees who have been trained in first aid and may come in contact with bloodborne pathogens and other infectious materials while carrying out first aid and/or CPR.

2.4.2 To any employee who cleans up after a spill of blood or other potentially infectious materials following and illness or injury incident.

3 EXPOSURE CONTROL PLAN

The following engineering and work practice controls are employed to minimize exposure to human bloodborne pathogens and other potentially infections materials.

3.1 No employee shall render medical treatment beyond first aid.

3.2 Gloves must be worn whenever there is a possibility of contact with human blood or other body fluids.

3.3 Masks must be worn whenever there is a possibility of splattering of human blood or body fluids.

3.4 Aprons must be worn if soiling of exposed skin or clothing is likely.

3.5 To minimize the risks of exchange of body fluids during resuscitation procedures, pocket masks or mechanical ventilation devices are available in bloodborne pathogen kits.

3.6 Spills of blood or blood contaminating body fluids shall be cleaned up using materials provided in the bloodborne pathogen kit. The contaminated item shall be put into the biohazard bag for proper disposal.

3.7 Individuals who have open lesions, dermatitis, or other skin irritations should not participate in direct victim care activities and should not handle contaminated items. If emergency situation requires participation, these individuals should double glove.

3.8 Sharp objects represent the greatest risk for exposure. Use tweezers to remove glass or other sharps from the victim. Use broom and dust pan to clean up contaminated glass or other sharp objects.

3.9 Gloves shall not be reused. Exam gloves must be disposed of after only one use.

3.10 Employees shall wash hands and any other skin with soap and water immediately after contact with blood or other potentially infectious materials.

3.11 If water is not available, antiseptic hand cleaner and towelettes shall be used.

4 PERSONAL PROTECTIVE EQUIPMENT

4.1 Bloodborne Pathogen Kit is provided at no cost to employees or to the site. They are placed in an easily accessible location usually next to the First Aid Kits.

4.2 The Bloodborne Pathogen Kit includes personal protective equipment as follows:

4.2.1 Protective exam gloves
4.2.2 Protective eye wear
4.2.3 Shoe covers
4.2.4 Apron
4.2.5 Isolation mask
4.2.6 Antiseptic wipes

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

4.3 The Bloodborne Pathogen Kit includes clean-up items as follows:
- 4.3.1 Absorbent powder.
- 4.3.2 Scoops/Scrapers.
- 4.3.3 Disposable red biohazard bags with ties.
- 4.3.4 Disposable towels.

5 HOUSEKEEPING:

5.1 Surface cleaning and disinfecting.
- 5.1.1 All surfaces will be properly cleaned and disinfected immediately or as soon as possible after contact with blood and/or body fluids. Surfaces are disinfected using a mixture of 1 (one) part sodium hypochlorite (household bleach) diluted with 10 (ten) parts water.

5.2 Infectious waste disposal.
- 5.2.1 All materials which are contaminated with blood or other potentially infectious materials shall be collected in a color-coded container for disposal. The color shall be orange-red and the container shall be identified with the Biohazard label.
- 5.2.2 Any area where an injury occurred and has caused the area to be contaminated with blood or other potentially infectious materials shall be cleaned and disinfected immediately using materials provided in the Bloodborne Pathogen Kit. All clean-up items will be placed in the special collection container for proper disposal.

5.3 Laundry:
- 5.3.1 Contaminated laundry such as work clothes, will be placed in a labeled and color coded (orange) plastic bag for transportation to the cleaners, in accordance with the following:
  - 5.3.1.1 If laundry is wet and presents a potential for leakage, a second bag will be placed over the first to prevent further contamination during handling, storage, or transportation.
  - 5.3.1.2 Any employee's personal clothing that is contaminated with blood and /or other potentially infectious materials will be removed before the employee leaves. The clothing will be sent to be laundered or replaced and paid for by the site.

6 POST EXPOSURE EVALUATION AND FOLLOW-UP:

All employees who have had occupational exposure to blood and/or body fluids are offered a confidential medical follow-up evaluation, vaccination, and post-exposure medical management at no cost. The follow-up is performed under the employee's personal physician according to the following provisions:

6.1 The employee's personal physician is provided with a copy of the OSHA 29 CFR 1910.1030 Bloodborne Pathogens Standard and a description of the employee's duties.

6.2 The employee's personal physician will complete the Bloodborne Pathogens Occupational Exposure Record (Appendix B). This record is used to document the route(s) of exposure, if known, the circumstances under which the exposure occurred, and all follow-up actions taken.

6.3 If the source patient can be determined, permission will be obtained before collecting and testing the source patient's blood. The testing will determine the presence of HBV or HIV. Any information obtained from the evaluation of the source patient's blood will remain strictly confidential.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Note: The source patient can refuse to submit to any blood test.

6.4 The blood of the exposed employee will be tested for HBV and HIV status as soon as possible after exposure. At the request of the employee, actual antibody or antigen testing of the blood serum may be done at that time or at a later date.

6.5 The site will obtain and provide to the exposed employee a copy of the physician 's written report within 15 working days. The evaluation includes specific findings or diagnoses, which are relevant to the employee's ability to receive the HBV vaccination. The treating physician will discuss the HBV symptoms and methods of treatment with the employee. All other findings and diagnoses will remain confidential.

7 EMPLOYEE TRAINING :

7.1 Training is provided to those employees who are First Aid/CPR trained and all other employees who may, in the course of their normal employment be required to handle, come in contact with, or dispose of any materials containing contaminated or potentially contaminated blood and/or body fluids.

7.2 Training is provided upon employee's job assignment and on annual basis thereafter.

7.3 Training will also be provided to any other employees who may be occupationally exposed to blood, body fluids, or other potentially infectious materials.

7.4 Training is performed on annual basis and shall include the following topics:

7.4.1 A review of the OSHA 29 CFR 1910.1030 Bloodborne Pathogens Standard and a brief explanation of its contents.

7.4.2 A general explanation of the symptoms of bloodborne disease, modes of transmission, infection control, and the appropriate steps to be taken to avoid contact with blood, body fluids, or other potentially infectious materials.

7.4.3 An explanation of the post exposure procedure, who to report to and other accident related information.

7.5 The Bloodborne Pathogen Training shall be documented on the Affordable Solar Training form by the Supervisor. The Bloodborne Pathogen Training forms shall be kept at EH&S Dept training file.

7.6 Training records shall be maintained for 3 years from the date on which the training occurred.

8 RECORD KEEPING:

8.1 Medical Records

8.1.1 All post-exposure records with respect to this program are maintained by Human Resources for the duration of employment plus thirty (30) years in accordance with 29 CFR 1910.1020. This information is kept in the employees' medical file.

8.1.2 The employee's medical file shall include the following:

8.1.2.1 A copy of the employee's Hepatitis B vaccination record and medical records relative to the employee's ability to receive the HBV vaccination.

8.1.2.2 A copy of the Bloodborne Pathogens Occupational Exposure Record, the physician's examination, medical testing and all follow-up reports.

8.2 OSHA Recordkeeping

8.2.1 Exposure incidents in which the employee is exposed to blood and/or body fluids are entered on the OSHA 300 log.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

9 ANNUAL EVALUATION:

The Affordable Solar Bloodborne Pathogens Program will be evaluated annually by the EH&S Department using the Bloodborne Pathogens Program Annual Audit. (Appendix C).

10 APPENDICES:

Appendix K: Bloodborne Pathogens Occupational Exposure Record
Appendix L: Bloodborne Pathogens Annual Evaluation
Appendix M: Exposure Incident Form

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX K BLOODBORNE PATHOGENS OCCUPATIONAL EXPOSURE RECORD

Name of Exposed Employee:_____

Department:_____

Pre-Exposure Hepatitis Vaccination:

Date Given:_____

Date refused:_____

Date Booster Given:_____

Date of Exposure:_____

Location of Exposure Incident:_____

Route of Exposure:_____

Description of Incident:_____

What personal protective equipment was used:_____

Serological Testing for HBV or HIV dates:
1st_____2nd_____3rd_____

Medical Evaluation Date:_____

Name of source individual_____

Source Individual Tested for HBV or HIV Date:_____

Date of written medical opinion_____

Medical opinion performed by_____

Exposed Employee's Signature_____

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX L
BLOODBORNE PATHOGENS PROGRAM
ANNUAL EVALUATION

Appendix L

On an annual basis, Affordable Solar written Bloodborne Pathogens Plan is evaluated by the EHS department to determine if the sites are adhering to the written plan, as well as the OSHA, 29 CFR 1910.1030 Bloodborne Pathogens Standard. This documented will be maintained by the EH&S department indefinitely.

	Program Areas To Be Evaluated	**Requires Updating YES**	**NO**	**Date Update Complete**
1	Has your written program been reviewed and updated within the last year?			
2	Has a list of job classifications in which all of the employees have exposure been developed and updated?			
3	Have employees followed the established work practice controls that have been established?			
4	Have all affected employees received annual training on the requirements of the Bloodborne Pathogens Standards?			
5	Is the training documented?			
	Have employees who are exposed or potentially exposed to blood and/or body fluids been offered the Hepatitis B vaccination?			
6	Have employees who are exposed or potentially exposed to blood and/or body fluids that have declined the Hepatitis B vaccination signed the Hepatitis B vaccination Declination Form?			
7	Other			
Signature:		Date:		

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX M

EXPOSURE INCIDENT FORM

In the event of an exposure incident, two forms must be completed: (1) the Employer's First Report *of Injury* *f*orm for worker's compensation, and (2) the information on this form, as required by OSHA. The information provided below is intended to assist in evaluating the control methods used and to prevent future employee exposures.

Name of Person_____Department_____

Incident Date_____Time_____

Incident: Mark in each column, as appropriate

Incident:	**Injury type:**	**Body Part Injured:**
☐ Cut:	☐ Abrasion:	☐ Finger:
☐ Exposure:	☐ Laceration:	☐ Hand:
☐ Body Fluids:	☐ Puncture:	☐ Arm:
☐ Infectious Material:	☐ Mucus Membrane:	☐ Eye:
☐ Other_____	☐ Other_____	☐ Other_____

Description of Incident:
Protective equipment used:

☐ Gloves:	☐ Protective Sleeves:	☐ Other:
☐ Goggles:	☐ Lab Coat:	
☐ Face Mask/shield:	☐ Gown:	

Seen by*:*

☐ UEHC:
☐ No Medical Treatment Sought
☐ Emergency Treatment Center

What changes need to be made to prevent reoccurrence?

Report prepared by:_____

Position_____

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: HOUSEKEEPING

POLICY 013

PURPOSE:
Work areas are to be clean, orderly, and well lit. This reduces the potential for slips, trips, falls and struck-by accidents.

SCOPE:
The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY:
Good housekeeping is everyone's responsibility.

PROCEDURE:
Good housekeeping is basic for a safe work environment as it prevents incidents and fires while creating a business-like workplace. When a site is clean and neat, it is easier for employees to find the tools and materials needed to do the job efficiently. Good housekeeping also makes it easier to respond or evacuate out of a work area during an emergency situation.

1. Employees shall keep the project site and surrounding grounds clean and free from trash and debris.
2. All trash will be deposited in the proper disposal containers.
3. Work areas will be kept clean, especially near walkways.
4. Walkways will be kept clear of material and debris.
5. Remove or bend protruding nails from lumber and other debris daily.
6. The area around stairs and ladders must be kept clear of material and debris.
7. Never block an exit path or doorway.
8. Never block fire extinguishers, electric panels, or the eye wash station.
9. Materials, tools and equipment must be stored in a stable position to prevent rolling or falling.
10. Spills of oil and grease must be cleaned using site-specific spill response procedure.
11. Oily rags must be placed in approved metal fireproof containers.
12. At shift end, all work areas shall be cleaned, trash picked up, trashcans emptied, and floors swept.
13. All excess materials shall be staged away from foot or vehicle traffic areas.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: MANUAL LIFTING

POLICY 014

PURPOSE:
Despite the availability of lifting equipment, we still must physically lift and move objects from place to place. By observing some simple precautions, you can avoid injury and make your work easier.

SCOPE:
The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY:
Employees are expected to comply with the safe lifting principles and rules set forth by Affordable Solar .

PROCEDURE:
Employees can reduce injuries by minimizing any materials handling, using mechanical devices and equipment for assistance whenever possible and following proper lifting techniques.

Employees should practice these lifting principles:

1. Make a preliminary "lift" to make sure that the load lifts easily with your lifting capacity. If it does not, get help.
2. Create a balanced base of support by using one foot ahead and one foot behind to get the weight in close.
3. Stand close to the load and bend your knees.
4. Lift with legs.
5. Keep head high, chin tucked in.
6. Keep your back as straight as possible.
7. Walk; never run, while carrying materials.
8. Never twist your body when carrying any material. Pivot with the load.
9. Never carry material with your vision obstructed.
10. Do not twist your back while moving material. Keep shoulders in line with your hips.
11. Do not bend forward at the waist with work in a low position.
12. Do not reach with a heavy load.

Musculoskeletal Disorders (MSD)
Constant manual handling with improper form puts you at risk of developing MSDs. You should always follow proper lifting procedures, but should signs and symptoms of a MSD occur, notify your supervisor and the EH&S Department immediately. Early reporting is the most effective way to avoid long-lasting problems. For more on MSDs, refer to EHSOP 21: Office Ergonomics.

1. Put one foot up and change positions often when standing for log periods of time.
2. Keep work at a comfortable height.
3. Stand, if possible on a cushioned mat.
4. Change stressful positions frequently.
5. Any questions or concerns should be addressed with your supervisor and/or the EH&S Department as soon as possible.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: POWERED INDUSTRIAL TRUCK PROGRAM (Forklifts)

POLICY 015

REFERENCE: 29 CFR 1910.178; 29 CFR 1926.600; 29 CFR 1926.602; ANSI B56.1-1969

PURPOSE:
The purpose of the Powered Industrial Truck Program is to provide safety rules and guidelines for the safe operation of powered industrial trucks. This plan is written to comply with the OSHA powered industrial truck standards, 29 CFR 1910.178; 29 CFR 1926.600; and 29 CFR 1926.602

SCOPE:
The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY:

Operators are responsible for:

1. Successfully completing all training and testing required to be an authorized operator of a powered industrial truck.
2. Operating all powered industrial trucks in a safe manner consistent with Affordable Solar established guidelines.
3. Inspecting all powered industrial trucks at the beginning of each shift and completing the daily inspection checklist.
4. Reporting an unsafe operating condition to the responsible person and red tagging the truck.
5. Communicating with the motor vehicle driver before and after loading or unloading.
6. Communicating to the motor vehicle driver that it is strictly prohibited to move a vehicle's cab or trailer during loading or unloading.
7. Verifying that:
    a. The driver of the motor vehicle has restrained the vehicle using a wheel chock; Note: Chocking is not required for vehicles being provided "tailgate service" only.
    b. The engine has been turned off and the keys are in the driver's possession;;
    c. The transmission is in low gear or park, and the parking brake is engaged.

Operator Evaluators are responsible for:

1. Evaluating every trainee adequately.
2. Notifying the Supervisor of the trainee's pass/fail result in a timely manner.
3. Providing the EH&S Department with copies of the test, evaluation form, and rules sheet within 24 hours after a certification has been granted.
4. Providing EH&S Department with the name and immediate supervisors name of the employee being certified.

Managers and Supervisors are responsible for:

1. Ensuring that all operator candidates including full time, part-time and temporary employees who are expected to operate powered industrial trucks have received training and are certified.
2. Assuring that all operators of Powered Industrial trucks have proper certification as outlined in section 7 of this policy.
3. Maintaining powered industrial trucks according to the manufacturer's recommendations.
4. Notifying the appropriate contact person when powered industrial trucks need repair.

EH&S Department is responsible for:

1. Writing, maintaining, reviewing and evaluating the Powered Industrial Truck Program.
2. Issuing powered industrial truck licenses to employees who have been certified as an operator.

3. Being a resource to all personnel when questions about this program arise.

POWERED INDUSTRIAL TRUCK PROGRAM

Table Of Contents

General Requirements:

1.1. Only trained, authorized, and certified personnel are permitted to operate a powered industrial truck.

1.2. Documentation of the training and certification of forklift operators will be filed and stored in the EH&S Department safety files.

1.3. The Fair Labors Standard Act prohibits workers under age 18 from using forklifts in general industry. 29 CFR 570.58

1.4. Powered industrial trucks which need repair or are defective or unsafe in any way shall be red tagged and removed from service until repaired.

1.5. All powered industrial trucks acquired and used after February 15, 1972, shall meet the design and construction requirements of ANSI B56.1-1969.

1.6. No modifications or additions, which affect capacity and safe operation, may be made. Should modifications or additions become needed, a request for modification or addition shall be submitted to the responsible truck owner. Capacity, operation, and maintenance instruction plates, tags or decals shall be changed accordingly.

1.7. No modification to the seat or truck frame shall be conducted by a Affordable Solar employee. Needed modifications shall be requested of the responsible truck owner in writing.

1.8. If the truck is equipped with extra front-end attachments, it shall be marked to identify the attachments, and show the appropriate weight of the truck attachment combination at maximum elevation with the load laterally centered.

1.9. All Powered Industrial Truck nameplates and markings shall be maintained in legible condition.

2. Designated classes of trucks and locations of use

Before a powered industrial truck can be operated in an area, the atmosphere, environment or location shall be classified to determine the proper class and selection of powered industrial truck. Affordable Solar are currently classified as general warehouse facilities, or indoor and outdoor locations containing ordinary combustible materials. Therefore, all classes of powered industrial trucks may be used, provided that weight capacity requirements are met.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

3. Safety Guards – Overhead, Backrest, Restraints

3.1. High lift rider trucks shall be fitted with an overhead guard manufactured in accordance with ANSI B56.1-1969.
3.2. Powered industrial trucks used for handling small objects or unbanded units shall be equipped with a vertical load backrest extension manufactured in accordance with ANSI B56.1-1969.
3.3. If the powered industrial truck is equipped with an operator restraint system, the operator shall use it.
3.4. Do not jump from an overturning, sit-down type forklift. Stay with the truck if lateral or longitudinal tip over occurs. Hold on firmly and lean in the opposite direction of the overturn.
3.5. Exit from a stand-up type forklift with rear-entry access by stepping backward if a lateral tip over occurs

4. Fuel Handling and Storage:

4.1. The storage and handling of **liquid fuels** such as gasoline and diesel fuel shall be in accordance with NFPA Flammable and Combustible Liquids Code (NFPA No. 30-2008).
4.2. The storage and handling of liquefied petroleum **gas fuels** shall be in accordance with NFPA Storage and Handling of Liquefied petroleum Gases Code (NFPA No. 58-2011).
4.3. Fuel tanks shall not be filled while the truck is running.

5. Battery Changing and Charging Requirements:

5.1. Batteries shall be changed or charged only by personnel who are trained and authorized to perform these jobs.
5.2. Follow all applicable manufacturers' process instructions when changing, charging, cleaning and/or performing any routine maintenance on batteries.
5.3. Battery charging installations shall be done in designated areas.
5.4. Facilities shall be provided for:
5.4.1. flushing and neutralizing spilled electrolyte;
5.4.2. fire protection;
5.4.3. protecting charging apparatus from damage by trucks, and
5.4.4. adequate ventilation for dispersal of fumes from off-gassing batteries.
5.5. Appropriate personal protective equipment shall be worn while charging/watering batteries such as a face shield, acid gloves, and acid aprons.
5.6. When charging batteries, acid shall be poured into water; water shall not be poured into acid.
5.7. Powered industrial trucks shall be properly positioned and brake applied before attempting to charge batteries.
5.8. When charging batteries, the vent caps shall be kept in place to avoid electrolyte spray. Care shall be taken to assure the vent caps are functioning.
5.9. The battery (or compartment) cover(s) shall be open to dissipate heat and fumes.
5.10. Precautions shall be taken to prevent sources of ignition such as open flames, sparks or electric arcs in battery charging areas.
5.11. Smoking is prohibited in the charging area.
5.12. Tools and other metallic objects shall be kept away from the top of uncovered batteries.
5.13. Do not use open flames to check electrolyte level in storage batteries.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

6. Trucks and railroad cars

6.1. The brakes of motor vehicle trucks shall be set and wheel chocks, placed under the rear wheels to prevent the trucks from rolling while they are boarded with powered industrial trucks.

6.2. Wheel stops or other recognized positive protection will be provided to prevent railroad cars from moving during loading or unloading operations.

6.3. Fixed jacks may be necessary to support a semitrailer and prevent upending during the loading or unloading when the trailer is not coupled to a tractor.

7. Operator Training, Evaluation, Certification and Recertification

7.1. All Affordable Solar operator candidates, including full time, part-time and temporary employees operating material handling equipment must be certified by Affordable Solar regardless of prior certification by other agencies.

7.2. Prior to operating a powered industrial truck (except for training purposes) potential operators of powered industrial trucks shall successfully complete a Powered Industrial Truck Safety training course that complies with OSHA requirements for powered industrial truck training.

7.3. Trainees may operate a powered industrial truck only under the direct supervision of persons who have the knowledge, training, and experience to train operators and evaluate their competence and where such operation does not endanger the trainee or other employees.

7.4. Training must consist of formal training and practical application. Formal training may be lecture, discussion, video tape, written material, or a combination thereof. Practical training will include an evaluation of the operator's performance.

7.5. All operator training and evaluation shall be conducted by persons who have the knowledge, training, and experience to train powered industrial truck operators and evaluate their competence.

7.6. Powered industrial truck operators shall receive initial training in the following topics:

- 7.6.1. Operating instructions, warnings, and precautions for the types of truck the operator will be authorized to operate;
- 7.6.2. Differences between the truck and the automobile;
- 7.6.3. Truck controls and instrumentation: where they are located, what they do, and how they work;
- 7.6.4. Engine or motor operation;
- 7.6.5. Steering and maneuvering;
- 7.6.6. Visibility (including restrictions due to loading);
- 7.6.7. Fork and attachment adaptation, operation, and use limitations;
- 7.6.8. Vehicle capacity;
- 7.6.9. Vehicle stability;
- 7.6.10. Any vehicle inspection and maintenance that the operator will be required to perform;
- 7.6.11. Refueling and/or charging and recharging of batteries;
- 7.6.12. Operating limitations;
- 7.6.13. Any other operating instructions, warnings, or precautions listed in the operator's manual for the types of vehicle that the employee is being trained to operate.
- 7.6.14. Surface conditions where the vehicle will be operated;
- 7.6.15. Composition of loads to be carried and load stability;
- 7.6.16. Load manipulation, stacking, and unstacking;
- 7.6.17. Pedestrian traffic in areas where the vehicle will be operated;
- 7.6.18. Narrow aisles and other restricted places where the vehicle will be operated;
- 7.6.19. Hazardous (classified) locations where the vehicle will be operated;
- 7.6.20. Ramps and other sloped surfaces that could affect the vehicle's stability;

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

7.6.21. Closed environments and other areas where insufficient ventilation or poor vehicle maintenance could cause a buildup of carbon monoxide or diesel exhaust;

7.6.22. Other unique or potentially hazardous environmental conditions in the workplace that could affect safe operation.

7.6.23. Once training is complete, the trainee will take the Affordable Solar Forklift Operator Test (Appendix A). The trainee must pass the Affordable Solar Forklift Operator Test with a score of eighty percent (80%) or better to pass.

7.7. Operator Evaluation

7.7.1. Each operator's performance shall be evaluated by a competent person who has the knowledge, training, and experience to evaluate a trainee.

7.7.2. The performance evaluation details are as follows:

7.7.2.1. The evaluator shall observe the trainee actually operating the equipment.

7.7.2.2. The Affordable Solar Forklift Operator Evaluation Form (Appendix B) is to be used to document the trainee's evaluation.

7.7.2.3. Trainee observed operating equipment in an unsafe manner during the evaluation will not be certified.

7.8 Certification:

7.8.1 After training has been completed, and a passing evaluation performed, the trainee will sign the Affordable Solar Operator Rules (Appendix C).

7.8.2 All three (3) documents will be forwarded to the EH&S Department.

7.8.3 A "Certification of Authorization to Operate" shall be issued by the EH&S Department. This certificate shall include the operator's name, date of certification, and the name of the evaluator.

7.8.4 The Operator will carry the "Certification of Authorization to Operate" on his/her person during work hours.

7.8.5 The certification documentation will be kept on file at the site.

7.8.6 This certification documentation will also be kept on file by the EH&S Department.

7.9 Refresher training and evaluation:

7.9.1 Operators shall be retrained and re-evaluated when the operator has been observed operating the vehicle in an unsafe manner, the operator has been involved in an accident or near-miss incident, new equipment is introduced, existing equipment is modified, or new hazards are introduced.

7.9.2 Operators shall be recertified at least once every 3 years.

7.9.3 Recertification includes a review of forklift training, a written test, an evaluation, and an updated Affordable Solar Forklift Operator Rules sheet.

7.9.4 All three (3) documents will be forwarded to the EH&S Department.

7.9.5 The procedure for certification of operators as outlined above will be followed.

8. Truck Operations

8.1. Powered industrial trucks shall not be driven up to anyone standing in front of a fixed object.

8.2. No one may stand or pass under the elevated portion of a powered industrial truck, whether loaded or empty.

8.3. Affordable Solar employees will not at any time use a powered industrial truck to lift or elevate personnel.

8.4. Unauthorized personnel shall not be permitted to ride on powered industrial trucks.

8.5. Arms or legs shall not be placed between the uprights of the mast or outside the running lines of the powered industrial truck.
8.6. When leaving a powered industrial truck unattended, lower the load engaging means, neutralize controls, shut off power, and set brakes. Whenever a powered industrial truck is parked or left on an incline, at least one wheel shall be blocked or chocked.
8.6.1. **Note:** A powered industrial truck is unattended when the operator is 25 feet or more away or out of the view of the truck.
8.6.2. If the operator has dismounted, and is within 25 feet of the truck still in view, the load engaging means shall be fully lowered, the controls neutralized, and the brakes set to prevent movement.
8.7. Powered industrial trucks shall be operated safely away from edges on elevated ramps or platforms.
8.8. Powered industrial trucks shall not be used for opening or closing freight doors.
8.9. Chocking is required for every vehicle parked in the service yard being loaded or unloaded by a powered industrial truck (chock both front and back of wheel).
8.9.1 **Note:** Chocking is not required for vehicles being provided "tailgate service" only.
8.10. A spotter shall be used when loading customer vehicles and there is more than one Affordable Solar employee on-site. The spotter can be a permanent or temporary employee. The spotter must be qualified to perform the duties of a spotter.
8.11. The flooring of vehicles shall be checked for cracks, holes, or weaknesses before a forklift is driven onto it.
8.12. Portable ramps shall be secured to trailers and chocked to prevent moving while being used. Operators shall ensure that ramps are properly secured before driving onto the ramps.
8.13. Sufficient headroom or clearance shall be maintained under overhead installations (lights, pipes, sprinkler systems, etc.).
8.14. Fire rated corridors/aisle ways, access to stairways, and fire equipment shall be kept clear.
8.15. Prior to operating any communication device (i.e. portable or cell phones), the operator shall place any load in a safe and secure position, the truck shall be stopped and the brakes shall be applied.

9. Traveling

9.1. Traffic regulations shall be observed as follows:
9.1.1. Driver is required to stop at main aisle ways and blind corners,
9.1.2. Driver is required to slowdown at cross aisles, and
9.1.3. Driver is required to sound a horn at ALL intersections and blind corners.
9.2. Approximately three truck lengths shall be maintained from the powered industrial truck ahead.
9.3. Passing other powered industrial trucks traveling in the same direction at intersections, blind spots, or other dangerous locations is prohibited.
9.4. The operator shall keep a clear view of the path of travel or have a spotter.
9.5. If the load being carried obstructs forward view, the driver shall travel with the load trailing. (i.e. driving in reverse)
9.6. Grades shall be ascended and descended slowly and according to surface conditions.
9.7. The loaded powered industrial truck shall be driven with the load upgrade when driving on ascending or descending grades greater than 10%.
9.8. On all grades, the load and load engaging means shall be tilted back if applicable, and raised only as far as necessary to clear the road surface.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

9.9. The powered industrial truck shall be operated at a speed that will permit it to be brought to a stop in a safe manner.
9.10. Stunt play and horseplay are prohibited.
9.11. The operator shall slow down before entering wet and slippery floors.
9.12. Dockboards shall be properly secured before they are driven over.
9.13. Operators shall confirm dockboard capacity.
9.14. Dockboards shall be driven over carefully and slowly.
9.15. Dockboard capacity shall never be exceeded.
9.16. DO NOT accelerate on dock boards.
9.17. Avoid running over loose objects on the roadway surface.
9.18. While negotiating turns, speed shall be reduced to a safe level by means of turning the hand steering wheel in a smooth, sweeping motion. EXCEPT when maneuvering at a very low speed, the hand steering wheel shall be turned at a moderate, even rate.
9.19. Railroad tracks shall be crossed diagonally when possible. Powered industrial trucks shall not be parked within 8 feet (2.4 m) of the center of active railroad tracks.
9.20. Minimum 10 feet (3 m) clearance shall be maintained in all directions from overhead electric lines.
9.21. When operating powered industrial trucks on roadways subject to public access, turns shall be signaled with appropriate electronic or hand signals.

10. Loading

10.1. Only stable, secured and safely arranged loads shall be handled. Exercise caution when handling loads which cannot be centered.
10.2. Only handle loads within the rated capacity of the powered industrial truck. Forks should be as wide as possible to stabilize the load.
10.3. Long or high (including multiple-tiered) loads which may affect capacity shall be adjusted.
10.4. Trucks with attachments shall be operated as partially loaded even when empty.
10.5. A load-engaging means (forks) shall be placed as far as possible under the load. The mast shall be carefully tilted backward to stabilize the load.
10.6. When tilting the load forward or backward use extreme care, particularly when high tiering. Ensure powered industrial truck is NOT in motion.
10.7. Tilting forward with load engaging means elevated is prohibited EXCEPT to pick up a load.
10.8. An elevated load shall not be tilted forward EXCEPT when the load is in a deposit position over a rack or stack.
10.9. When stacking or tiering, use only enough backward tilt to stabilize the load.

11. Maintenance and Inspection of industrial trucks

11.1. Powered industrial trucks shall not be altered in any of the following ways:
11.1.1. so that the relative positions of the various parts are different from what they were when originally received from the manufacturer;
11.1.2. by the addition of extra parts not provided by the manufacturer or;
11.1.3. by the elimination of any parts.
11.2 Additional counter weighting of powered industrial trucks shall not be done.
11.3 Forklift Maintenance - Inspection Procedures:
11.3.1 Each operator shall complete a visual and operational inspection of the powered industrial truck prior to use.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

11.3.2 The inspection shall be documented on the Affordable Solar Daily Checklist (Appendix D) at the start of each day.

11.3.2.1 **NOTE:** Checklists shall be maintained in a specific file at the Affordable Solar site for which the operator is documented as employed.

11.3.2.2 Correspondence regarding a maintenance request, or a repair request must be attached to the checklist.

11.3.3 If the powered industrial truck fails the inspection, it will be reported to the appropriate truck owner for corrective action.

11.3.4 If you need to correct an entry on a checklist draw a line through it and put your initials next to it.

12. **Evaluation**

Affordable Solar will review and evaluate the written powered industrial truck program on an annual basis, or when changes occur to 29 CFR 1910.178 that prompt revision of this document, or when facility operational changes occur that require a revision of this document.

13. **Violations**

13.1. Violations of any rules pertaining to the safe operation of the powered industrial truck shall be subject to strict disciplinary actions up to and including termination.

13.2. Forklift Safety Violation procedure is outlined in SOP #5, Paragraph 2.

14. Appendices:

Appendix N – Forklift Operator Test
Appendix O – Forklift Operator Evaluation Form
Appendix P – Forklift Operators Rules
Appendix Q – Operator's Daily Checklist

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX N FORKLIFT OPERATOR TEST

Employee name:_____ Date:_____

Administered by:_____ Site:_____

TRUE or FALSE

_____ 1. Operators should check their trucks at the beginning of each shift.
_____ 2. Operators must face the direction in which the machine is traveling.
_____ 3. When faced with a suddenly shifting load, the best procedure is to slowly lower it for re- positioning.
_____ 4. Most forklift hydraulics can lift in excess of their rated capacities, but it is not safe because of tip-over.
_____ 5. If your forklift is in need of safety repair, it is best to stop immediately and take it out of service.
_____ 6. Repairs to industrial trucks should be made only by personnel trained and authorized to make them.
_____ 7. If you are not able to see because of a large load in front of you, it is better to drive backwards than to try and see around it on one side.
_____ 8. Under no condition should anyone be permitted under the elevated forks or load.
_____ 9. Smoking is permissible in refueling areas providing you see no leaking fuel.
_____ 10. It is a common practice to go up a ramp with the forks and the load up front.
_____ 11. When loading a highway truck or trailer, its wheels should be chocked or blocked even though the driver says the brakes are set.
_____ 12. The low center of gravity of most forklifts will prevent them from tipping over on turns.
_____ 13. Forklift users shall not eliminate any parts, alter their relative positions, or add counter-weight to trucks.
_____ 14. When traveling with a load, the most secure position for the load is mast tilted slightly forward.
_____ 15. A good objective of forklift safety training is zero accidents and injuries for all personnel.
_____ 16. Site hazards include high storage, docks, dark areas, intersections, pedestrians, and uneven loads.
_____ 17. Driving with obstructed view or elevated load is OK over short distances and level surfaces.
_____ 18. It is required by forklift operators to carry their forklift operator license on their person when operating a forklift.
_____ 19. It is permissible to overload the truck by 25% if additional counterweights are used.
_____ 20. When parking your truck, forks are to be 12 inches off the ground.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX O
AFFORDABLE SOLAR FORKLIFT OPERATOR EVALUATION FORM

Employee Name:_____ Date: _____

Administered by:_____

Driving Evaluation
YES or NO

_____ 1. Complete Daily forklift checklist and requirements.

_____ 2. Mount/ dismount the forklift using the 3 point.

_____ 3. Seatbelt requirement

_____ 4. Fork height 6" off the ground while traveling.

_____ 5. Demonstrate forward and reverse with equipment.

_____6. Stop and honk before proceeding through an intersection.

_____7. Demonstrate the use of hydraulic controls (lift, lower, tilt, side, and shift).

_____8. Stop and lowers load before traveling

_____9. Lower forks/ turn key off and remove key.

_____10. Set brake.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX P FORKLIFT OPERATOR RULES

1. Inspections must be performed at the beginning of each day. Forklift daily checklist sheet must be filled out and kept on filing.
2. Passengers are never allowed on forklifts
3. Seatbelts must be worn at all times while operating forklifts
4. Only trained and authorized personnel shall drive or refuel forklifts.
5. All accidents must be reported immediately, regardless of how minor.
6. Horseplay, reckless driving and excessive speed are prohibited.
7. Horns must be sounded (1) at all intersections, (2) when you see pedestrians (they have the right of way) and (3) when you see other trucks.
8. At all times prior to backing up, look to insure there is no one or nothing behind you.
9. Arms and legs are to be kept within the running lines of the forklift. The cage is for your protection.
10. Driving with load elevated is prohibited.
11. Loads must not be adjusted while moving.
12. If view is obscured, drive in reverse. Do not lift load high enough to see under.
13. Forks must be fully lowered when parked. Forks on the ground.
14. Forklift drivers must assure over-the-road trucks are chocked before entering them.
15. Forklift drivers must assure dock boards are anchored and sound before driving over them.
16. Drivers must adjust to driving conditions. Slow on wet surfaces.
17. Forklifts must not be left running while unattended. (Unattended means within 25 feet or out-of-sight).
18. The tilt mechanism is not to be operated after the load is lifted, except to deposit the load in a rack.
19. Forklift must not be driven into areas prohibited to traffic.
20. Drivers should have a valid driver's license (automobile) in order to drive a forklift.

THESE RULES ARE NOT ALL-INCLUSIVE; DRIVERS ARE RESPONSIBLE FOR ADHERENCE TO ALL RULES PRESENTED. VIOLATION OF ANY OF THESE RULES MAY RESULT IN DISCIPLINE UP TO AND INCLUDING TERMINATION.

_____ _____

Print Name Name

_____ _____

Signature Date

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Appendix Q

Operators daily checklist

As a forklift operator, pre-operation inspections should be part of your daily routine. Pre-Operation inspections help not only increase the longevity of your forklift, but also help decrease accidents due to component failure while operating it.

Exterior Inspection

*Be sure forklift is parked on a level surface, brake is applied, forks are lowered to the ground and the key switch is off before beginning the inspection.

- ☐ No Visible coolant or oil leaks
- ☐ Brake fluid levels are appropriate
- ☐ Engine oil is appropriate
- ☐ Good Tire pressure, No damage, cracks, or wear
- ☐ No Loose hub nuts
- ☐ No Dirt, Damage or Cracks on lamps
- ☐ Coolant levels are appropriate
- ☐ Hydraulic oil levels are appropriate
- ☐ No Damage, bends, looseness, or chain tension to forks or backrest

On-vehicle Inspection

- ☐ Mast, forks, lift chains, hydraulics and carriage operates properly
- ☐ Back mirror is in good condition
- ☐ Brake and clutch pedals function properly
- ☐ Parking brake lever is effective
- ☐ Proper operation of each gauge
- ☐ No abnormal noise, vibration, emission color or emission smell
- ☐ Lamps turn on and off
- ☐ No loose steering
- ☐ Horn works properly with no interference
- ☐ OPS Indicator lighting operates effectively

Date of Inspection_____

Inspected By_____

PASS FAIL

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: HEARING PROTECTION PROGRAM

POLICY 016

REFERENCE: 29 CFR 1910.95 - Noise

PURPOSE: The primary goal of the Affordable Solar Hearing Conservation Program is to reduce, and eventually eliminate hearing loss due to workplace noise exposures.

SCOPE: The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY:

The **Office of Environmental Health (EH&S)** is responsible for developing, implementing, and administering the Hearing Conservation Program.
Additional responsibilities include:

- Identification of work areas and equipment within Affordable Solar facilities where noise levels equal or exceed 85 dBA.
- Identification, through personnel monitoring, of Affordable Solar employees whose noise exposure level equals or exceeds an 8-hour TWA of 85 dBA. Notification of employee exposure measurements is sent to the employee, the employee's supervisor and to Occupational Medicine and Health Service for inclusion in annual audiology program.
- Noise surveys and/or noise dosimetry must be conducted to determine which areas require warning signs;
- Training of employees in the need for, proper use and care of hearing protection devices. The training must include the following topics:
    1. Noise induced hearing loss;
    2. Recognizing hazardous noise;
    3. Symptoms of overexposure to noise;
    4. Hearing protection devices advantages & limitations;
    5. Selection, fitting, use and maintenance of hearing protection devices;
    6. Explanation of noise measurement procedures;
    7. Hearing conservation program requirements.
- Identification of noise control measures (including engineering and administrative controls) and recommendations.

Site Managers

It is the responsibility of Site Managers to ensure that all of their employees exposed to noise levels equal to or greater than 85 dBA have access to appropriate hearing protective devices in the work area and enroll those employee(s) in the Hearing Conservation Program if identified as having an 8-hour TWA equal to or exceeding 85 dBA. Site Managers are responsible for enforcing the use of hearing protective devices and engineering and administrative controls in designated noise hazardous areas and dispensing ear muffs when necessary as well as maintaining a supply of disposable ear plugs.
The Site Manager must ensure that the following are maintained:

- Signs posted at the entrance to any work area where noise levels equal or exceed 85 dBA
- Supply hearing protection to his/her employee(s) at no cost to the employee(s);
- Enforcement of the wearing of hearing protection in the designated areas using established disciplinary procedures;
- Hearing Protection Devices are used and maintained as originally intended and in accordance with instructions provided.

The Site Manager is also responsible for coordinating and scheduling Hearing Conservation Program training for all employees at their site who participate in the Hearing Conservation Program with EH & S Department.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Employees

Employees are responsible for wearing and maintaining hearing protective devices as instructed. Employees enrolled in the Affordable Solar Hearing Conservation Program must also participate in annual training programs and the medical surveillance program, which includes baseline and annual audiometric testing.

Table of Contents

1. IDENTIFICATION OF HAZARDOUS NOISE AREAS

The Department of Environmental Health and Safety (EH&S) will identify work areas within Affordable Solar facilities where noise levels equal or exceed 85 dBA. Signs will be posted at the entrance to any work area where noise levels exceed 85 dBA, requiring anyone entering the area to wear proper hearing protection. Personnel who work in these areas shall have hearing protection supplied to them, shall be instructed in its proper use, and be required to wear this equipment when in these identified areas. It is the responsibility of the area supervisor to ensure that these precautions are maintained.

2. NOISE MEASUREMENTS AND EXPOSURE ASSESSMENTS

All noise monitoring will be conducted by EH&S. The monitoring of employees for noise exposure is made up of two parts, area and personal monitoring. Area measurements are generally obtained first. If noise levels are at or above 85 dBA, personal monitoring using dosimeters is then performed. Sample data sheets will be used to record monitoring data for both area and personal noise monitoring results. EH&S will provide observation of the monitoring to employees who work in the area.

3. AREA MEASUREMENTS

In an area survey, measurements of environmental noise levels are recorded using a sound level meter to identify work areas where employees' exposures may be above hazardous levels, and where more thorough exposure monitoring may be needed. Area monitoring is conducted using a calibrated sound level meter set to the A scale, slow response. Within the area of interest, several different locations will be measured. Typical measurement locations would include:

- In the hearing zone at the employee's normal work location.
- Next to the noise source(s).
- At the entrance(s) to the work area.
- At other locations within the area where the employee might work.

A rough sketch of the area will be included with the results showing the locations where the noise readings were obtained.

If the noise levels are below 85 dBA on a time-weighted average basis in the area, no further routine monitoring will be required for that area. Should any of the noise measurements equal or exceed 85 dBA, records shall be maintained as to the noise levels recorded, where they were taken, and the source(s) of the noise. These records shall be updated at least once every two years to determine if any changes have occurred that would warrant re-monitoring of exposed personnel. If any of the measurements equal or exceed a noise level of 85 dBA, employees who work in or near the high noise area or equipment shall have their noise exposure determined through personnel monitoring using dosimeters.

4. **PERSONNEL MONITORING**

Determination of the noise exposure level will be accomplished using calibrated noise dosimeters. Each employee to be monitored will have a dosimeter placed on him/her at the beginning of his/her normal work shift with the microphone placed in the "hearing zone". The dosimeter will be worn for the full duration of the work shift while the employee performs his/her normal work routine. At the end of the work shift, the dosimeter will be removed and information printed out as soon as possible. Background information will be collected from each employee detailing job description, unusual job activities, etc., for the time period sampled. Those employees whose noise exposure equal or exceeds 85 dBA on an 8-hour TWA(Total Weighted Average) will be referred to the designated Center of Occupational Medicine Service for inclusion in the Hearing Conservation Program.

5. **RE-MONITORING OF HAZARDOUS NOISE AREAS**

All areas where noise levels equal or exceed 85 dBA shall be re-monitored at least every two years. Whenever an employee exhibits a standard threshold shift, as determined by designated Center of Occupational Medicine, the employee's work place shall be re-monitored to identify and rectify the cause.

6. **RE-MONITORING DUE TO CHANGES**

Any area with noise levels that equal or exceed 85 dBA shall also be re-monitored whenever a change in production process, equipment, or controls increase the noise exposure such that additional employees are exposed to noise levels at or above 85 dBA on a time-weighted average basis. Areas where the noise levels have dropped below 85 dBA due to alterations in equipment, controls or process changes may be eliminated from the monitoring program after a period of two months.

7. **ENGINEERING AND ADMINISTRATIVE CONTROLS**

The primary means of reducing or eliminating personnel exposure to hazardous noise is through the application of engineering controls.

7.1 Engineering controls are defined as any modification or replacement of equipment, or related physical change at the noise source or along the transmission path that reduces the noise level at the employee's ear. Engineering controls such as mufflers on heavy equipment exhausts or on air release valves are required where possible.

7.2 Administrative controls are defined as changes in the work schedule or operations which reduce noise exposure. If engineering solutions cannot reduce the noise, administrative controls such as increasing the distance between the noise source and the worker or rotation of jobs between workers in the high noise area should be used if possible.

The use of engineering and administrative controls should reduce noise exposure to the point where the hazard to hearing is eliminated or at least more manageable.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

8. **PERSONAL PROTECTIVE EQUIPMENT**

Hearing protective devices (ear plugs, muffs, etc.) shall be the permanent solution only when engineering or administrative controls are considered to be infeasible or cost prohibitive. Hearing protective devices are defined as any device that can be worn to reduce the level of sound entering the ear. Hearing protective devices shall be worn by all personnel when they must enter or work in an area where the operations generate noise levels of:

- Greater than 85 dBA sound levels and/or;
- 120 dB peak sound pressure level or greater.

9. **TYPES OF HEARING PROTECTIVE DEVICES**

9.1 **Insert Type Earplugs:** A device designed to provide an air-tight seal with the ear canal. There are three types of insert earplugs - premolded, formable, and custom earplugs.

9.1.1 **Premolded Earplugs:** Premolded earplugs are pliable devices of fixed proportions. Two standard styles, single flange and triple flange, come in various sizes, and will fit most people. Personnel responsible for fitting and dispensing earplugs will train users on proper insertion, wear, and care. While premolded earplugs are reusable, they may deteriorate and should be replaced periodically.

9.1.2 **Formable:** Formable earplugs come in just one size. Some are made of material which, after being compressed and inserted, expands to form a seal in the ear canal. When properly inserted, they provide noise attenuation values that are similar to those from correctly fitted premolded earplugs. Individual units may procure approved formable earplugs. Supervisors must instruct users in the proper use of these earplugs as part of the annual education program. Each earplug must be held in place while it expands enough to remain firmly seated. A set of earplugs with a cord attached is available. These earplugs may be washed and therefore are reusable, but will have to be replaced after two or three weeks or when they no longer form an airtight seal when properly inserted.

9.1.3 **Custom Molded Earplugs**: A small percentage of the population cannot be fitted with standard premolded or formable earplugs. Custom earplugs can be made to fit the exact size and shape of the individual's ear canal. Individuals needing custom earplugs will be referred to an audiologist.

9.2 **Earmuffs:** Earmuffs are devices worn around the ear to reduce the level of noise that reaches the ear. Their effectiveness depends on an air tight seal between the cushion and the head.

10. **SELECTION OF HEARING PROTECTIVE DEVICES**

Employees will be given the opportunity to select hearing protective devices from a variety of suitable ones provided by the Office of Environmental Health and Safety. In all cases the chosen hearing protectors shall have a Noise Reduction Ratio high enough to reduce the noise at the ear drum to 85 dBA or lower.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

11. **ISSUANCE OF HEARING PROTECTIVE DEVICES**

The issuance of hearing protective devices is handled through EH&S Supervisor. EH&S will issue and fit the initial hearing protective devices (foam inserts, disposables). Instruction on the proper use and care of earplugs and earmuffs will be provided whenever Hearing Protection Devices are dispensed. Personnel requiring earmuffs in addition to earplugs will be informed of this requirement and educated on the importance of using proper hearing protection. The Site Manager will dispense ear muffs when necessary and will maintain a supply of disposable earplugs.

12. **USE OF HEARING PROTECTIVE DEVICES**

1. Always use and maintain Hearing Protection Devices as originally intended and in accordance with instructions provided.
2. Earmuff performance may be degraded by anything that compromises the cushion-to-circumaural flesh seal. This includes other pieces of personal protective equipment such as eyewear, masks, faceshields, and helmets.

13. **MAINTENANCE OF HEARING PROTECTIVE DEVICES**

1. Reusable earplugs, such as the triple flange or formable devices should be washed in lukewarm water using hand soap, rinsed in clean water, and dried thoroughly before use. Wet or damp earplugs should not be placed in their containers. Cleaning should be done after each use and prior to another employee wearing the same Hearing Protection Devices.
2. Earmuff cushions should be kept clean. The plastic or foam cushions may be cleaned in the same way as earplugs, but the inside of the muff should not get wet. When not in use, ear muffs should be placed in open air to allow moisture that may have been absorbed into the cups to evaporate.

14. **HEARING PROTECTION PERFORMANCE INFORMATION**

The maximum of sound attenuation one gets when wearing hearing protection devices is limited by human body and bone conduction mechanisms. Even though a particular device may provide outstanding values of noise attenuation the actual noise reductions may be less because of the noise surrounding the head and body bypasses the hearing protector and is transmitted through tissue and bone pathways to the inner ear.

15. **MEDICAL SURVEILLANCE**

15.1 **Notification:**
Upon identification of employees whose 8-hour TWA (Total Weighted Average) equals or exceeds 85 dBA, EH&S will inform the employee(s), Occupational Medicine and the employees' Supervisor, in writing, of the need to enroll certain employee(s) in the Hearing Conservation Program. Information supplied to Occupational Medicine will include the employee(s) name, supervisor's name, telephone number, and the noise levels recorded in the employee's work area, including dosimetry data. It will be the responsibility of the Supervisor to enroll his/her employee in the Hearing Conservation Program.

In work locations where either through administrative or engineering controls, noise levels are found to have fallen such that the employee's 8-hour TWA (Total Weighted Average) is below 85 dBA, EH&S shall notify the employees, designated Center of Occupational Medicine and the employee's Supervisor, by memo, that the employees working in that area are no longer required to be enrolled in the Hearing Conservation Program. The final decision as to an employee's enrollment status will be left with the Office of Environmental Health and Safety.
The results of area and personal monitoring shall be forwarded to Occupational Medicine upon completion of the noise surveys.

Any personnel experiencing difficulty in wearing assigned hearing protection (i.e., irritation of the canals, pain) will be advised to immediately report this to their supervisor and make arrangements to go to Occupational Medicine for evaluation as soon as possible.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

16. **AUDIOMETRIC TESTING**

Affordable Solar and a Designated Occupational Medicine Service have the responsibility for administering the Audiometric Testing Program portion of the Affordable Solar Conservation Program. The object of the audiometric testing program is to identify workers who are beginning to lose their hearing and to intervene before the hearing loss becomes worse. Audiometric testing will be provided to all employees whenever employee noise exposures equal or exceed an 8-hr. time-weighted average (TWA) of 85 dBA. Annual retesting will be performed for all personnel enrolled in the Hearing Conservation Medical Surveillance Program.

17. **TRAINING**

17.1 The training and education program will provide information about the adverse effects of noise and how to prevent noise-induced hearing loss. At a minimum, all training will cover the following topics:

- Noise-induced hearing loss;
- Recognizing hazardous noise;
- Symptoms of overexposure to hazardous noise;
- Hearing protection devices - advantages and limitations.
- Selection, fitting, use, and maintenance of Hearing Protection Devices.
- Explanation of noise measurement procedures.
- Hearing conservation program requirements.

17.2 Employees will also be provided with copies of the OSHA noise standard (29 CFR 1910.95) and other handouts describing the Affordable Solar Hearing Conservation Program.

17.3 Affordable Solar employees shall be encouraged to use hearing protective sevices when they are exposed to hazardous noise during activities at home; e.g., from lawn mowers, chain saws, etc.

17.4 The Office of Environmental Health and Safety will provide annual refresher training. Supervisors must contact EH&S to schedule training for new personnel assigned to work in noisy environments and for retraining of current personnel.

18. **RECORDKEEPING**

Hearing Conservation Program records will include the following:

Medical Evaluation and Audiograms (Concentra)
Training Records (EH&S)
Hearing Conservation Program Manual (EH&S)

Hazard Evaluations (EH &S)

All non-medical records (ex., work area and equipment surveys) will be maintained for a period of five years. Results of hearing tests and medical evaluations performed for hearing conservation purposes as well as noise exposure documentation shall be recorded and shall be a permanent part of an employee's health record.

All personnel who routinely work in designated hazardous noise areas shall be identified and a current roster of such personnel shall be maintained by EH&S and Occupational Medicine, and updated periodically.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: MOTOR VEHICLE OPERATION PROGRAM

POLICY 017

PURPOSE: Affordable Solar employees may operate their personal vehicles for company business. RPC employees may also be requested to travel, requiring the use of a company vehicle and employees may need to operate a commercial motor vehicle.

SCOPE: The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY: It is the employee's responsibility to comply with state laws, Affordable Solar policy, and safety rules while operating a motor vehicle on company business.

PROCEDURE:

1. Company policy requires all motor vehicle operators and all passengers to properly fasten their seat belts while operating any motor vehicle on company business. Failure to do so could result in disciplinary action, up to and including termination.
2. Periodically, Affordable Solar supervisors, at their discretion, may visually check employee's driver licenses, motor vehicle registration and insurance cards.
3. EH&S and supervisor's may inspect company vehicles for cleanliness. Having a company vehicle is a privilege; the vehicle shall be maintained regularly by scheduling time with the Maintenance Department, and the vehicle shall be kept presentable at all times.
4. Employees involved in a motor vehicle incident on company business are to report the incident immediately to their supervisor and the Affordable Solar EH&S Department.
5. Employees involved in a motor vehicle incident on company business are to complete a Affordable Solar incident report.
6. Any Affordable Solar employee operating a motor vehicle while on company business, may be subject to disciplinary action, up to and including termination, for deliberate failure to comply with state laws and/or Affordable Solar policy and/or safety rules.

Operating a Commercial Motor Vehicle - DOT Medical Certification

Pursuant to 49 CFR Part 390.5 and 49 CFR Part 391.41, Affordable Solar employees shall not operate a commercial motor vehicle without obtaining a proper medical examiner's certificate stating that he/she is physically qualified to operate a commercial motor vehicle. A commercial motor vehicle is a vehicle with a gross vehicle weight rating of 10,001 or more. In order to obtain a DOT Medical Certificate, the employee must do the following:

1. Obtain approval from his/her supervisor to get a DOT Medical Certificate.
2. Contact a local medical examiner (physician) who performs DOT Medical Certificate exams and make an appointment.
3. Complete the examination and receive the DOT Medical Certificate.
4. Pay for the medical examination.
5. Submit an expense/reimbursement form to his/her supervisor for full reimbursement of examination charges.
6. Submit a copy of the DOT Medical Certificate to the EH&S Department for recordkeeping purposes.
7. A copy of the DOT Medical Certificate must be kept on the employee's person at all times while operating a commercial motor vehicle for Affordable Solar . Anyone failing to adhere to this requirement will be subject to disciplinary actions.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: PAINTING SAFE PRACTICES

POLICY 018

PURPOSE: The purpose of the PAINTING Safe Practices is to protect the worker when working with paints and the painting process. This plan is written to comply with the OSHA rules.

SCOPE: The information in this policy applies to all Affordable Solar employees and supervisors performing duties at any locations.

RESPONSIBILITY: It is the responsibility of the Supervisor to provide PPE based on the Hazard Assessment form APPENDIX H.

POLICY AND PROCEDURE:

Painting

1. When painting with a brush on or near live parts energized at 5,000 volts or above, the brush shall be attached to an approved insulated stick.

2. When painting in areas lacking adequate ventilation, workers shall wear properly fitted organic/particulate half-face respirators. Employees performing this task must notify safety personnel and review Rule 406 Respiratory Protection.

3. Smoking is prohibited within 25 feet of spray painting operations.

4. Spray painting shall not be allowed near live wires unless barriers are placed between the spray gun and live parts.

5. Spray painting pressure tanks shall be equipped with pressure relief valves and gauges.

6. When adequate air supply is not available or short-term exposure limits are exceeded, air-supplied respirators shall be worn.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: REMOTE LOCATION (LONE WORKER POLICY)

POLICY 018

PURPOSE: Affordable Solar has work sites that are with only one or two employees. Periodically, an employee is requested to travel to perform work at an unmanned site. This procedure has been developed as a safety measure for employees working at the remote locations.

SCOPE: The information in this policy applies to all Affordable Solar employees and supervisors performing duties at the remote locations.

RESPONSIBILITY: It is the responsibility of the Supervisor to provide means of communication for employee working alone or at a remote location.

POLICY AND PROCEDURE:

1. When only one employee is assigned to work at the remote location site:
   1.1. The Affordable Solar employee will contact their supervisor upon arrival at the site, throughout the day, and upon departing the site.
   1.2. The Affordable Solar employee will carry a cell phone on their person.
   1.3. The Affordable Solar employee will carry on their person **AN EMERGENCY CONTACT LIST** and will program it into his/her cell phone. The contact list will contain the name and telephone number of the direct supervisor, the EH&S Department, and the main office.

2. When two employees are assigned to work at the remote location site:
   2.1. When a site has at least two employees, the employees will carry on their person either a cell phone or a radio to communicate with each other.
   2.2. If the location provides an office for the employees, all safety postings, including the Emergency Contact List are required.
   2.3. If the location does not provide an office for the employees, then the guidelines for "when only one employee is assigned to a work site" apply.

As a reminder: No matter how remote the location is, all Company, Federal, and State regulations apply. Carelessness by an employee will result in disciplinary actions.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: SLIP, TRIP, AND FALL PREVENTION

POLICY 020

REFERENCES: OSHA 29 CFR 1910.21, 22, and 23

PURPOSE: This procedure/practice is designed to help employees identify slip, trip and fall hazards and prevent injuries resulting from such hazards.

SCOPE: The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY:
- Supervisors are responsible to follow up with corrective action on identified reported slip, trip and fall hazards.
- Employees are responsible to clean spills promptly, avoid carrying heavy loads, and be diligent in keeping debris from the walk/work areas. Employees are expected to use ladders properly.

PROCEDURES AND PRACTICES:
Slip, trip and fall accidents include falls incurred in the buildings and on the grounds, they are identified as falls on the same floor level or simple falls to the ground, floor, and stairs.

The following list includes examples of common causes for slips, trips and falls in the workplace:

1. Housekeeping and Maintenance Practices
   - 1.1. Accumulation of clutter and waste.
   - 1.2. Improper storage of material and equipment.
   - 1.3. Spills.
   - 1.4. Extension cords, conduits, cables, and hoses across walking surfaces.
   - 1.5. Loose and unsecured floor mats, carpets, and coverings.
   - 1.6. Damaged or missing flooring materials.
   - 1.7. Stairs and ramps with loose or missing handrails.
   - 1.8. Inadequate lighting.

2. Walking and Working Surface Conditions
   - 2.1. Slippery, wet or icy walking surfaces.
   - 2.2. Uneven walking surfaces.
   - 2.3. Surface changes such as carpet to tile or level to slope.
   - 2.4. Surface protrusions or depressions such as thresholds, cover plates, and gratings.

3. Work Practices
   - 3.1. Wearing inappropriate footwear for the task.
   - 3.2. Carrying items that obstruct view.
   - 3.3. Rushing to complete work.

4. Personal Behavior
   - 4.1. Wearing improperly fitted, loose, or undone footwear or clothing.
   - 4.2. Cutting through areas not designated or intended as walkways.
   - 4.3. Horseplay and running in the workplace.
   - 4.4. Not paying attention.

5. Report slip, trip and fall hazards immediately. Why?
   - 5.1. Immediate reporting of the hazard allows for prompt corrective action.
   - 5.2. Ensures a safe and healthy workplace
   - 5.3. Eliminates injuries in the workplace.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: HAND AND PORTABLE POWER TOOLS

POLICY 021

REFERENCE: 29 CFR 1910.243-244

PURPOSE: The purpose of this procedure is to prevent injury to Affordable Solar employees from the improper use of hand and power tools and /or from the use of damaged or defective tools.

SCOPE: The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITIES:

- Affordable Solar is responsible for the safe condition of tools and equipment used by employees.
- Employees are responsible for properly using and maintaining tools.

PROCEDURE:

Affordable Solar strictly enforces safe use and application of hand and portable power tools. All tools shall be used in the way they were designed and intended to be used by the manufacturer.

General Rules:

1. Use the right tool for the job.
2. Always use the proper personal protective equipment.
3. Wear proper clothing. Loose clothing or jewelry can become caught in moving parts.
4. Perform pre-work inspections of tools and machines to ensure they are working properly.
5. All hand and power tools furnished by Affordable Solar must be in safe working condition.
6. Employees should comply with manufacture's instructions for use.
7. Damaged or defective tools should be tagged out of service and turned over to your supervisor for repair.
8. All employees using hand and power tools should be trained in their use and safe operations. ***Training must be documented and a copy of the training must be sent to the EH&S department.***
9. Any tools that are designed to have guards and handles are required to have those guards and handles unaltered and in place at all times.
10. Electrical power tools and equipment should be properly grounded or double insulated. Always use Ground Fault Circuit lnterrupters (GFCI's).
11. Do not use electrical power tools or equipment while standing in water.
12. Power tools should never be carried, raised, or lowered by the electrical cord or hose.
13. Never yank the cord or the hose to disconnect it from the receptacle or extension cord.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar Installation, Inc., DBA Gridworks

TITLE: DRUGS AND ALCOHOL POLICY

REPLACED BY GRIDWORKS' DRUG AND ALCOHOL POLICY #009

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar Installation, Inc., DBA Gridworks

TITLE: OFFICE SAFETY POLICY

POLICY 023

PURPOSE: Offices can pose a number of hazards. Among them are dangers from floor surfaces, stairs, chairs, filing cabinets, office machinery, sharp objects, and falls. Slips, trips and falls are the most common types of job related accidents experienced by office workers.

SCOPE: The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY Employees are expected to comply with the Office Safety principles and rules set forth by Affordable Solar .

PROCEDURE:
The following safety practices should help reduce office-related accidents:

1. Keep aisles and walkways clear.
2. Practice good housekeeping.
3. Walk, do not run.
4. Clean up spilled liquids immediately, after determining that a hazardous substance is not involved.
5. Avoid wet floors whenever possible. If you must walk on a wet floor, slow down, shorten your stride, point your toes slightly outward, and make wide turns.
6. When walking in rain, wear shoes that provide added traction.
7. Take extra care when walking from a carpeted area to a smooth hard surface.
8. Secure loose carpeting and cut loose threads.
9. Take your time and watch where you are going, especially when you are rounding a corner.
10. Carry loads of reasonable size so that your vision is not obstructed.
11. Use handrails on stairways.
12. Never run electrical or communication cords across walkways.
13. Never run electrical cords under carpet.
14. Never leave file cabinet drawers open.
15. To keep filing cabinet from toppling over, open only one drawer at a time and file all heavy materials in the bottom drawer of a filing cabinet.
16. Always use a ladder or stepstool to reach an object over your head.
17. Never stand on swivel chairs or desks.
18. When sitting down in a chair, look at the chair, grasp the chair armrests with your hands, and then lower yourself into the chair.
19. Replace or repair broken chairs.
20. When placing a ladder in front of a door, secure the door so no one can open it from either side.
21. Never leave objects on staircases.
22. Employees involved in handling of heavy materials should be trained in proper lifting methods.
23. Office machine repairs should only be made by competent service personnel.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar Installation, Inc., DBA Gridworks

TITLE: SAFETY AUDIT POLICY

POLICY 024

PURPOSE: The EH&S Dept. will conduct periodic, scheduled and unscheduled reviews at each site for the purpose of identifying supplemental training needs, reviewing the company's safety program compliance, and measuring the effectiveness of the safety training program.

SCOPE: The information in this policy applies to all Affordable Solar sites.

RESPONSIBILITY:
- It is the responsibility of the EH&S Department to conduct the safety audit.
- It is the responsibility of the Supervisor to manage the job site in an "ongoing readiness" mode for any regulatory inspection.
- It is the responsibility of the Manager to assist Supervisor with compliance issues.

PROCEDURE:
The Safety Audit will consist of the following elements:
- A review of the work site's safety program compliance;
- A report of the findings;
- An assessment of training needs; and
- A measurement tool for the effectiveness of the safety training program.

Review of Work Site Safety Compliance
A review of the work site's safety compliance will be determined by an administrative review and a site walk through.

The Administrative Review is an examination of the documents supporting all safety policies and procedures. The Administrative review must include the examination of all required postings, files, checklists, records, and manuals.

The site walk through is a visual inspection performed to observe or identify items out of compliance, unsafe conditions and unsafe actions. The site walk through will include offices, warehouses, and outside yards, job sites manned by Affordable Solar employees.

Upon completion of the document review and the site walk through, the EH&S department representative will confer with the Supervisor regarding any deficiencies found.

Reporting
The Safety Audit form will be sent to the Manager. Following a site safety audit the EH&S department representative will complete a trip report. The trip report is sent to the Manager. The trip report includes: a summary of the compliance issues identified at each site visited; a summary of training provided and; supplemental training plans required (if any).

Assessment of Training Needs
The EH&S department representative will interview several employees while visiting the job site to measure safety training knowledge and competency. The EH&S department representative will review the job site's performance deficiencies against weekly safety training provided to determine if supplemental training is needed.

If deemed appropriate, the EH&S representative will provide "on the spot refresher training". If the training assessment needs appear to be more extensive, a supplemental training plan will be developed for the site.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar Installation, Inc., DBA Gridworks

Measuring the effectiveness of Affordable Solar Safety Program
The EH&S Department will conduct Safety Audits at manned Affordable Solar sites. The EH&S department will identify trends, analyze their cause, develop and implement possible solutions to improve safety programs through the use of the Safety Audit Tool.

A quarterly report is submitted to Management summarizing the safety audits conducted during the quarter. The report summarizes the number of sites visited, the number of training topics covered on a spot refresher training basis and the number of supplemental training plans implemented. The quarterly report also summarizes the number of incidents reported with specific emphasis on material handling equipment incidents and OSHA recordable incidents.

Appendix R – Safety Audit

APPENDIX R

Affordable Solar Weekly Safety Inspection Report **Date:**

Inspected By: **Job:**

	Poor	Fair	Good	N/A	
1. Job Information					
Foreman has nearest medical facility paperwork.					
Weekly safety meetings are up to date.					
Work areas are properly signed and barricaded.					
First aid are supplies readily available.					
Potable drinking water and toilet facilities are on site.					
2. Housekeeping					
General cleanliness of work area is good.					
Waste containers are provided and used.					
Passageways and walkways are clear.					
3. Fire Prevention					
Adequate fire extinguishers are checked and accessible.					
Fire blankets are readily available, used, and in good condition.					
4. Electrical					
Extension cords or attachment cords are in good operating condition.					
Welding leads are in good operating condition.					
Electrical cords and welding leads are protected from damage.					
Lock out/ Tag out procedures are being followed.					
Circuits shut down are being tested before work begins.					
5. Hand/Power/Powder Actuated Tools					
Hand tools are inspected regularly.					
Are all guards are properly in place and functional.					
The right tool is being used for the job at hand.					
Operators of powder actuated tools are licensed.					
Damaged tools have been taken out of service.					
6. Fall Protection					
Safety cables and rails are secured properly.					
Employees exposed to fall hazards are tied off.					
Employees working below are protected from falling objects.					
Employees working above 6' are protected from falling by guardrails, safety nets, and/or personal fall arrest systems.					

	Poor	Fair	Good	N/A	
7. Ladders					
Ladders extend at least 36" above landing.					
Ladders are secured to prevent slipping, sliding, and falling.					
Damaged ladders are taken out of service.					
Stepladders are being used in fully opened position.					
Aluminum or wooden ladders aren't being used.					
Nobody is stepping above top 2 rungs of ladder.					

8. Scaffolding					
All scaffolding is inspected daily.					
Scaffolding is erected on sound sturdy footing.					
Scaffolding is tied to structure as required?					
Guardrails, intermediate rails, toe boards, and screens are place.					
Planking is sound and sturdy.					
Proper access is provided.					
Employees below are protected from falling objects.					

9. Floor or Wall Openings					
All floor or deck openings are planked over or barricaded.					
Perimeter protection is in place.					
Deck planks are secured.					
Materials are stored away from edge.					

10. Material Handling					
Materials are properly stored and/or stacked.					
Employees are using proper lifting techniques.					
Tag lines are being used on all material being lifted.					
Proper number of workers are being used for each operation.					

11. Welding & Burning					
Gas cylinders are stored upright, and secured.					
Proper separating distance between fuels and oxygen are adequate. (min. 25')					
Welding shields and/or goggles being used?					
Fire extinguishers are within 30' of hot work area.					
Hot work equipment is in good working condition.					

12. Cranes					
Outriggers are extended and swing radius barricade is in place.					
Employees are kept from under suspended loads.					

	Poor	Fair	Good	N/A	
Chains, straps, and all other rigging is inspected before each use.					
Planking is being used under outriggers to prevent crane from sinking in soft ground.					
Hand signal charts are on foremans truck.					

13. Aerial and Forklift Equipment					
Employees are standing on platform not railing.					
Equipment is being operated safely.					
Employees are wearing seatbelts.					
Material is being lifted in a safe manner.					
Employees are tied off in any lift going outside its wheelbase?					
Lock out/ Tag out procedure is in use on any machinery that is broken or could cause injury to the employee or equipment.					

14. Personal Protective Equipment					

Harnesses and hard hats are being inspected for damage and experation.					
Hard hats are being worn.					
Safety glasses are being worn along with a face shield while grinding.					
Leather work boots or approved footwear is being worn.					
Hearing protection is being worn when required.					
Reflective vests or shirts are being worn when required.					

15. Vehicles					
Vehicles with an obstructed view have a backup alarm or spotter being used.					
All vehicles and equipment have seatbelts.					
There is a fire extinguisher on all equipment and vehicles.					

16. Unsafe Acts or Practices observed:

Signature: _____ **Date:** _____

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: OSHA RECORDKEEPING PROGRAM

POLICY 025

REFERENCE: OSHA - 29 CFR 1904

PURPOSE:
Records provide employers and OSHA with statistical data to enable safety programs to determine where emphasis should be placed in order to mitigate or eliminate injuries or accidents in the future. The OSHA Recordkeeping Standard establishes uniform requirements to make sure that the illnesses and injuries sustained in the U.S. workplaces are evaluated, and that this information is properly collected, compiled, retained, analyzed, and transmitted to all affected workers and to OSHA.

SCOPE:
The information in this policy applies to all Affordable Solar employees.

RESPONSIBILITY:
The EH&S Department is solely responsible for all facets of this program and has full authority to make necessary decisions to ensure success of the program. The EH&S Department will develop written detailed instructions covering each of the basic elements in this program, and is the sole entity authorized to amend these instructions.

THE WRITTEN OSHA RECORDKEEPING PROGRAM

Table of Contents

1. Introduction:

OSHA's standard practice instruction provides for recordkeeping and reporting requirements covered under 29 CFR 1904 as necessary or appropriate for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics both for this company and as part of the national system for analysis of occupational safety and health.

Affordable Solar will develop and maintain a written OSHA Recordkeeping program. Affordable Solar will review and evaluate this standard practice instruction on an annual basis, or when changes occur to 29 CFR 1904 that prompt revision of this document, or when facility operational changes occur that require a revision of this document. Effective implementation of this program requires support from all levels of management within this company.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

2. General Recordkeeping Requirements:

This section provides for recordkeeping and reporting by Affordable Solar covered under 29 CFR 1904 as necessary or appropriate for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics both for this company and as part of the national system for analysis of occupational safety and health. Records shall be established on a calendar year basis.

2.1. Affordable Solar will report under 29 CFR 1904.39 concerning fatalities or multiple hospitalization accidents.

2.2. Affordable Solar will maintain a log of occupational injuries and illnesses under 29 CFR 1904.4 and make reports under 29 CFR 1904.42 upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

3. Log And Summary Of Occupational Injuries And Illnesses (OSHA 300).

The log will be used for classifying occupational injuries and illnesses, and for noting the extent of each case. The log shows when the occupational injury or illness occurred, to whom, the regular job of the injured or ill person at the time of the injury, illness, or exposure, the department in which the person was employed, the kind of injury or illness, how much time was lost, whether the case resulted in a fatality, etc. This employer shall:

3.1. Maintain a log and summary of all recordable occupational injuries and illnesses by calendar year.

3.1.1. The form will be updated to include newly discovered cases and to reflect changes which occur in recorded cases after the end of the calendar year. Although all OSHA injury and illness records will be retained, only the log must be updated by Affordable Solar . If, during the 5-year retention period, there is a change in the extent or outcome of an injury or illness which affects an entry on a previous year's log, then the first entry will be lined out and a corrected entry made on that log. New entries for previously unrecorded cases that are discovered will also be documented. Log totals will also be modified to reflect these changes.

3.2. Enter each recordable injury and illness on the log and summary as early as practicable but no later than 7 working days after receiving information that a recordable injury or illness has occurred. For this purpose OSHA Form No. 301 or an equivalent which is as readable and comprehensible to a person not familiar with it will be used. The log and summary shall be completed in the detail provided in the form and instructions on form OSHA No. 300.

3.3. If Affordable Solar elects to maintain the log of occupational injuries and illnesses at a place other than this establishment or by means of data-processing equipment, or both, it will meet the following criteria:

3.3.1. There will be available at the place where the log is maintained sufficient information to complete the log to a date within 7 working days after receiving information that a recordable case has occurred.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

4. Supplementary record (OSHA 301).

In addition to the log of occupational injuries and illnesses (OSHA 300) Affordable Solar shall have available for inspection at each of our sites within 7 working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration OSHA Form No. 301. Workmen's compensation, insurance, or other acceptable alternative records may be used if they contain the information required by OSHA Form No. 301 (according to OSHA). Affordable Solar has an established Accident/Incident Investigation Report as an acceptable alternative to the OSHA Form No. 301.

4.1. For all incidents, the Affordable Solar Accident/Incident Investigation Report shall be filled out completely and a copy sent to the EH&S for review no later than twenty-four (24) hours following the incident.

5. Annual summary.

Affordable Solar shall post an annual summary of occupational injuries and illnesses for each facility under our control. This summary shall consist of a copy of the year's totals from the form OSHA No. 300 and the following information from that form:

5.1. Calendar year covered.

5.2. Company Name and establishment address.

5.3. Certification signature, title, and date.

5.4. A form OSHA No. 300A shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros will be entered on the totals line, and the form posted.

5.5. The summary shall be completed by February 1 of each calendar year. Affordable Solar , or more specifically the EH&S Department, supervises the preparation of the log and summary of occupational injuries and illnesses. The Company Executive shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the Company Executive at the bottom of the last page of the log and summary or by appending a separate statement to the log and summary certifying that the summary is true and complete.

5.6. Affordable Solar shall post a copy of the establishment's summary at each facility in the manner required under 29 CFR 1904.32(b)(6). The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until April 30. For employees who do not primarily report or work at a fixed site belonging to this company, or who do not report to any fixed site on a regular basis this posting requirement will be satisfied by presenting or mailing a copy of the summary during the month of February of the following year to each such employee who receives pay during that month.

***NOTE:** For multi-establishment employers: It will not be necessary to post summaries for those establishments where operations have closed down during the calendar year.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

6. Records retention.
Records maintained by Affordable Solar will be retained for the following time periods following the end of the year to which they relate.

6.1. Log and summary of all recordable occupational injuries and illnesses (OSHA 300 and 300A) as described in 29 CFR 1904.33. Retained for 5 years.

6.2. Supplementary records (OSHA 301 or equivalent) for each occupational injury or illness for this facility as described in 29 CFR 1904.33. Retained for 5 years.

6.3. Employee exposure and medical records for company employees as described in 29 CFR 1910.9. Retained for 30 years after termination of employment.

6.4. Noise exposure measurement records as described in 29 CFR 1910.10. Retained for 25 years.

6.5. Audiometric test records as described in 29 CFR 1910.10. Retained for the duration of the affected employee's employment.

7. Access To Records.
Affordable Solar shall provide, upon request, records provided for in 29 CFR 1904.7, 1904.29, and 1904.32 , for inspection and copying by any representative of the Secretary of Labor for the purpose of carrying out the provisions of the OSHA act, and by representatives of the Secretary of Health, Education, and Welfare, or by any representative of a State accorded jurisdiction for occupational safety and health inspections or for statistical compilation.

7.1. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 300 and 301) will, upon request, be made available to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

8. **Reporting Of Fatality Or Multiple Hospitalization Accidents.**
Within 8 hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of three or more employees, Affordable Solar shall report the accident either orally or in writing to the nearest office of the Area Director of the Occupational Safety and Health Administration, U.S. Department of Labor (1-800-321-OSHA). The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of all injuries. It is understood that the Area Director may require such additional reports, in writing or otherwise, as he/she deems necessary, concerning the accident.

9. Change Of Ownership.
Should this company change ownership, the company shall notify the buyers of the requirement to preserve those records, if any, of the prior ownership which are required to be kept.

10. Petitions For Recordkeeping Exceptions.
Should Affordable Solar wish to maintain records in a manner different from that required, the company will submit a petition containing the information specified by the Regional Commissioner of the Bureau of Labor Statistics in the region occupied by our corporate offices.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

11. Statistical Program.
Affordable Solar will comply with all requirements to maintain, provide, and use statistical summaries. Affordable Solar shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the instructions.

12. Recordability And Classification.
The following decision logic will be followed when determining incident recordability and classification:

12.1. Determine whether a case occurred (death, injury, illness).

12.2. Establish that the case was work related. An incident is work related when one of the following conditions are met:

12.2.1. Case resulting from an event or exposure in the work environment. In addition to the physical location, equipment or materials used in the course of an employee's work are also considered part of the employee's work environment.

12.2.2. Case resulting from an event or exposure in other locations where employees are engaged in work-related activities or are present as a condition of their employment.

12.3. Establishing that the case was not work related. An incident is not work related when one of the following conditions are met:

12.3.1. An employee is off duty on our premises as a member of the general public and not as an employee.

12.3.2. An employee has symptoms that merely surface on company premises, but are the result of a nonwork-related event or exposure off the premises.

12.4. Determine if the case is an illness or injury.

12.4.1. Illness cases. Illnesses usually result from a long term exposure, or cases where the illness does not develop as the result of an instantaneous event. This concept of illness includes acute illnesses which result from exposures of relatively short duration.

12.4.2. Injury cases. Injuries are only required to be recorded when they require medical attention (other than first aid). Injuries are usually caused by instantaneous events in the work environment. Cases resulting from anything other than instantaneous events are considered illnesses. This concept of illness includes acute illnesses which result from exposures of relatively short duration.

12.5. Determine if the Injury is a Recordable case. If the case is an injury, decide if it is recordable. The following criteria will be used as a basis for recordability. The case will be recorded if the employee has:
12.5.1. A work related injury.
12.5.2. Medical treatment other than first aid.
12.5.3. Has a loss of consciousness.
12.5.4. Experiences restriction of work or motion.
12.5.5. Been transferred to another job title or department as a result of the injury.

12.6. Determine if the Illness is a Recordable case. Generally, occupationally induced illness should be recorded as a separate entry on the OSHA 300 (or equivalent) log. However, certain illnesses, such as silicosis, may have prolonged effects which recur over time. The recurrence of these symptoms will not be recorded as new cases on the OSHA forms. The recurrence of symptoms of previous illness may require adjustments of entries on the log for previously recorded illnesses to reflect possible change in the extent or outcome of the particular case. Where it is unclear if an entry should be made, contact the EH&S on advice for proper annotation.

12.7. Evaluate the Extent of Recordable cases. Once Affordable Solar decides that a recordable injury or illness has occurred, the case must be evaluated to determine its extent or outcome. There are three categories that OSHA recognizes as recordable cases. Every recordable case will be placed in only one of the following categories:

12.7.1. Fatalities. All work fatalities must be recorded, regardless of the time between the injury and the death, or the length of the illness.

12.7.2. Lost Workday cases. You must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). You are not required to keep track of the number of calendar days away from work if the injury or illness resulted in more than 180 calendar days away from work and/or days of job transfer or restriction.

12.7.3. Cases not resulting in death or lost workdays. These cases consist of the relatively less serious injuries and illnesses which satisfy the criteria for recordability but which do not result in death or require the affected employee to have days away from work or days of restricted work activity beyond the date of injury or onset of illness.

13. Annual OSHA Injury And Illness Surveys.

OSHA has the authority to collect establishment-specific data on different work places. These surveys require employers to report information to OSHA that is contained in records that employers are required to create and maintain pursuant to 29 CFR 1904.41, and the number of workers they employed and hours their employees worked during designated periods.

13.1. Affordable Solar will, upon receipt of OSHA's Annual Survey Form, report to OSHA or OSHA's designee the number of workers Affordable Solar employed and number of hours worked by the employees for periods designated in the survey form and such information as OSHA may request from records pursuant to 29 CFR part 1904.41.

13.2. Survey reports will be sent to OSHA by mail or other means described in the Survey Form within 30 calendar days, or the time stated in the Survey Form, which ever is longer.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar
TITLE: HAZARDOUS MATERIALS SPILL PROCEDURE

POLICY 026

PURPOSE:
During the course of work, there may be occasions where Affordable Solar employees may be exposed to material that has spilled out of resalable property, such as gasoline, diesel, or engine oil. This procedure is written as part of the general awareness training given to Affordable Solar employees so that they may identify, notify, and contain a small hazardous materials spill.

SCOPE:
The information in this policy applies to all Affordable Solar employees who may be exposed to hazardous materials under an emergency situation.

RESPONSIBILITY:
- It is the Supervisor's responsibility to post the Hazardous Materials Spill Procedure for all employees to read.
- It is the employees' responsibility to become familiar with their site specific hazardous materials pill procedure.

POLICY/PROCEDURE:
In case of a spill/leak of a hazardous material, Affordable Solar employees must strictly adhere to the following procedure for identifying, notifying, containing, and reporting, a small spill:

1. Note the extent of the spill.
2. Restrict the area of the spill.
3. Apply approved absorbent material as necessary. (Not dirt)
4. Notify EH&S Department of any/all spills or questionable situations.
5. Document the spill on an incident report. Take photographs of the event.
6. Forward the Affordable Solar incident report with pictures to the EH&S Department within **24 hours of incident occurrence**.

Training:
Affordable Solar shall provide employees with effective information and training on hazardous materials spill procedure in their work areas. The spill procedure **must be posted** at each work site. (Appendix A –Site Specific Spill Procedure Form)

Appendix:

Appendix S – Site Specific Spill Procedure Form

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX S

SITE SPECIFIC
HAZARDOUS MATERIALS SPILL PROCEDURE FORM

SITE: _____

POC (where applicable) Phone Number

Manager Phone Number

EH&S Manager Phone Number

Cleanup company contacted Time and Date

Contact for Cleanup Company Phone Number

Description of spill

****

Spill Check list

1. Restrict the area
2. Apply approved absorbent material as necessary (Not dirt)
3. Notify EH&S Department
4. Complete incident report and provide sketches of the area
5. Forward incident report to EH&S Department

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: CRANE SAFETY PROGRAM

POLICY 027

REFERENCE: 29 CFR 1910.179; 29 CFR 1926.550; 29 CFR 1926.602

PURPOSE:
The purpose of the Crane Safety Program is to provide safety rules and guidelines for the safe operation of cranes with bucket, magnet and grapple attachments.

Cranes are covered by the OSHA crane standard which defines a crane as, "…a machine for lifting and lowering a load and moving it horizontally, with the hoisting mechanism an integral part of the machine…A power-operated crane means a crane whose mechanism is driven by electric, air, hydraulic or internal combustion means." 29 CFR 1910.179 (a)(1) and (a)(9).

SCOPE:
This program is intended for use by Crane Operators working for Affordable Solar and employees working in the area where cranes are operated.

RESPONSIBILITY:
All Affordable Solar employees are required to wear a hard hat when working in or around an operating crane.

Operators are responsible for:
1. Successfully completing all training and testing required to be an authorized operator of a crane.
2. Operating all cranes in a safe manner consistent with Affordable Solar established guidelines.
3. Inspecting all cranes at the beginning of each operator's first use and completing the daily inspection checklist.
4. Reporting an unsafe operating condition to the crane owner.
5. Communicating with the motor vehicle driver before and after loading or unloading.

Operator Evaluators are responsible for:
1. Evaluating every trainee adequately.
2. Notifying the Supervisor of the trainee's pass/fail result in a timely manner.
3. Providing the trainee's site and the EH&S Department with copies of the test, evaluation form, and rules sheet within 24 hours after a certification has been granted.

Manager and Supervisors are responsible for
1. Ensuring that all operator candidates including full time, part-time and temporary employees who are expected to operate a crane have received training and are certified.
2. No person is eligible to operate a crane without proper certification outlined in Section 8 of this policy.
3. Maintaining the crane according to the manufacturer's recommendations.
4. Notifying the appropriate contact person when the crane needs repair.

EH&S Department is responsible for:
1. Writing, maintaining, reviewing and evaluating the Crane Procedure.
2. Issuing crane licenses to employees who have been certified as an operator,
3. Being a resource to all personnel when questions about this program arise.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

CRANE PROCEDURE

Table Of Contents

1. General Requirements:

1.1. Only trained, authorized, and certified personnel are permitted to operate a crane.
1.2. Documentation of the training and certification of crane operators will be filed and stored in the EH&S Department safety files.
1.3. The Fair Labors Standard Act prohibits workers under the age of 18 from using cranes in general industry. 29 CFR 570.58
1.4. Cranes which need repair or are defective or unsafe in any way shall be reported to the owner and removed from service until repaired.
1.5. Equipment must comply with the manufacture's specifications and limitations. All attachments used with cranes shall not exceed the capacity, rating, or scope recommended by the manufacture.
1.6. Without notifying the manufacture and obtaining written approval, OSHA strictly forbids modifications of, or additions to equipment, which affect the capacity or safe operation.
1.7. No modifications or additions, which affect capacity and safe operation, may be made. Should modifications or additions become needed, a request for modification or addition shall be submitted to the crane owner.
Capacity, operation, and maintenance instruction plates, tags or decals shall be changed accordingly.
1.8. The rated load of the crane shall be plainly marked on **EACH** side of the crane.
1.9. Access to the cab shall be by a conveniently placed fixed ladder, stairs, or platform requiring no step over any gap exceeding 12 inches.

2. Barricades and Swing Radius Protection

2.1. Barricades must be set up to protect employee's form being struck or crushed by the rotating superstructure of the crane.
2.2. Accessible areas within the swing radius of the rear of the crane, either permanently or temporarily mounted, shall be used.
2.3. Special attention must be given to guarding of the swing radius when near buildings or other structures.

3. Power Lines

3.1. The OSHA Standard contains specific requirement for the safe use of cranes close to overhead power lines. The preferred method of ensuring maximum safety is to:

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

3.1.1. Ensure all electrical distribution and transmission lines are de-energized and visibly grounded.
3.1.2. If this is not possible, cranes may operate close to power lines only if clearances in the below charts are observed.

Voltage	Minimum Clearance
50 kV or below	10 feet
Over 50 kV	10 feet + 0.4 for each 1 kV over 50kV or twice the length of the line insulator but never less than 10 feet,

3.2 When in transit with no load and boom lowered, the equipment clearance must be:

Voltage	Minimum Clearance
Less the 50 kV	Minimum of 4 feet
Over 50 kV up to and including 342 kV	Minimum of 10 feet
Over 345 kV up to and including 750 kV	Minimum of 16 feet

A designated "clearance" observer must be present to give timely warning for all operations where it is difficult for the operator to maintain the desired clearance by sight.

3.3 Other Safety Recommendations
Other Safety recommendations when working around power lines include:
3.3.1 Use nonconductive taglines, rather than direct contact, to stabilize the load.
3.3.2 Use insulating boots and gloves when workers connect the load or contact the crane while in the vicinity of overhead lines.
3.3.3 If the crane contacts power lines, employee should not touch the crane, load, and must discontinue using tag lines.
3.3.4 Employees should move away from the operations immediately to a safe location.
3.3.5 The operator should remain at the controls, and shall not jump from the crane. The cab is grounded and will provide greater protection than attempting to jump for the crane.

4. <u>Stability</u>
4.1. A crane's load ratings are generally developed for operations, (i.e., a level, firm surface). Unleveled surfaces or soft ground should be avoided. When soft ground is encountered, mats, outrigger pads, and/or cribbing should be used to distribute a crane's load and maintain a level, stable condition.
4.2. The crane should be "level".
4.2.1. On hydraulic cranes, using single bubble level mounted inside the operator's cab does this.
4.2.2. **NOTE***: If a crane is out of level by three degrees or more - most manufactures' state that the capacities identified in the load chart should be reduced by 50%.*
4.3. The outriggers when applicable should be fully extended.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

4.3.1. **NOTE:** Note that newer crane models are equipped with load charts specifically for fully extend, ½ extended, and retracted outriggers as well as a load chart for picking off of rubber without the use of outriggers.
4.3.2. Check outrigger pads to ensure that they are sized accordingly.
4.3.3. Outrigger pads should be built to sufficient material to withstand deflection/failure during use.

4.4 Path of intended travel must also be capable of supporting the crane and its load.

5. Load Rating Chart

5.1. A durable rating chart(s) with legible letters and figures must be attached to the crane in a location accessible to the operator while at the controls. The rating chart(s) shall contain the following:
5.1.1. A full complete range of manufacturer's crane loading ratings at all stated operating radii.
5.1.2. Operational equipment on the crane such as outriggers and extra counterweight which affect ratings.
5.1.3. A work area chart for which capacities are listed in the load rating chart, i.e., over side, over rear, over front, extended outriggers, ½ extended outriggers, retracted out riggers, and for picking off rubber without use of outriggers.
5.1.4. Weights of auxiliary equipment, i.e., load block, jibs, and boom extensions.
5.1.5. A clearly distinguishable list of rating based on structural, hydraulic or other factors rather than stability.
5.1.6. A list of no-load work areas.
5.1.7. A description of hoist line reeving requirements on the chart or in the operator's manual.

6. Operating Procedures:

6.1. All Affordable Solar employees are required to wear a hard hat when working in or around an operating crane. Other PPE selection and determination will be in compliance with SOP-6 Personal Protective Equipment.
6.2. Passengers
6.2.1. No one except the operator should be allowed on the crane when it is in operation.
6.2.2. The operator shall not hoist, lower, swing, or travel while anyone is on the load of hook. This includes riding a bare hook or a load of material.
6.3. During hoisting care shall be taken that:
6.3.1. There is no sudden acceleration or deceleration of the moving load;
6.3.2. The load does not contact any obstructions.
6.4. Cranes shall not be used for side pulls except when specifically authorized by a responsible person who has determined that the stability of the crane is not thereby endangered and that various parts of the crane will not be overstressed.
6.5. The employer shall require that the operator avoids carrying loads over people.
6.6. The operator shall test the brakes each time a load approaches the rated load capacity. The brakes shall be tested by raising the load a few inches and applying the brakes.
6.7. The employer shall insure that the operator does not leave his position at the controls while the load is suspended.
6.8. Whenever the equipment is parked, the parking brake shall be set.

6.9. All bidirectional machines shall be equipped with a horn, distinguishable from the surrounding noise level, which shall be operated as needed when the machine is moving in either direction.

6.10. The horn shall be maintained in an operative condition.

6.11. No employer shall permit earthmoving equipment which has an obstructed view to the rear to be used in reverse gear unless the equipment has in operation a reverse signal alarm, distinguishable from the surrounding noise level or an employee signals that it is safe to do so.

6.12. Hand Signals

6.12.1. The signal person and the crane operator must be familiar with the hand signals required by the ANSI standard for the crane type you are operating.

6.12.2. A chart illustrating the hand signals for the type of crane being operated shall be posted on the outside of the operator's cab of the crane.

6.13 Field of Vision

6.13.1 Check for any broken or cracked window glass that may affect the view of the operator.

6.13.2 Cab widows must be made of safety glass, or equivalent, with no visible distortions, and/or cracks that would interfere with safe operations.

6.13.3 If visible distortion and/or cracks are noted during the inspection, the operator should contact their supervisor to obtain a replacement window.

6.14 Placards

6.14.1 Check that rated load capacities, recommended operating speeds, special hazard warnings or instructions, i.e., electrical power line clearance requirements are posted and visible to the operator while at the control station.

7.5.3. Check the condition to the floats, and check that they are securely attached. Floats must have the capacity to be securely attached to the outriggers.

7.5.4. Outriggers, when used, shall be extended and tires shall be off the operations.

7.6. Brakes and Operator Aids

7.6.1. Inspection and test all breaks and clutches for proper adjustment and operations.

7.6.2. Always inspect boom hoist lockout and other operator aids, such ad anti-two-block devices and load moment indicators (LMI), for proper operation and calibration daily.

7.6.3. While the engine is running, check all gauges and warning lights for proper readings and operate all controls to see that they are functioning properly.

7.7. Cab

7.7.1. Check that inspection and maintenance records, operator's manual and appropriate load charts for the loads being lifted are present.

7.7.2. Check that the cab is clean and free for clutter.

7.7.3. Check that all controls are labeled as to their function.

7.7.4. Check that they are free to return to the neutral position when released unless designed to do otherwise.

7.7.5. Check that all gauges and warning lights are operable.

7.7.6. Check signal horn and back up alarms.

7.7.7. Check service/parking brake for proper operation.

7.7.8. Check that the seat is securely attached and the cab door operates smoothly.

7.8. Fire Extinguisher

7.8.1. An accessible fire extinguisher 10 pounds ABC rating, or higher, shall be located in all operator cabs.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: TERM CONTRACTORS (Sub-Contractors) Program

POLICY 028

PURPOSE: To establish a standard system for Affordable Solar Term Contractor.

SCOPE:
Each Affordable Solar contractor is responsible for complying with this policy and all provisions for Federal and State Environmental Health and Safety regulations and applicable standards.

RESPONSIBILITY:
Each Contractor is responsible to use good professional judgment while performing services for Affordable Solar .

All accidents/incidents involving Contractors must be promptly reported to the Affordable Solar Supervisor and EH&S Department with proper documentation.

The Contractor and Affordable Solar Supervisor are responsible for completing the Incident Investigation Report. (see Section-3A)

Contractors are responsible for the safe operation of equipment at all times. The operator is responsible for ensuring that the equipment is in safe operating condition before beginning its operation. In addition, the operator is responsible for checking for the proper functions of required safety devices prior to use. Operators must report any defects or malfunctions to the Affordable Solar Supervisor immediately.

Contractors shall permit only qualified employees', by documented training and/or certification, to operate equipment and machinery.

Each Contractor shall be directly responsible for payment to Affordable Solar on any equipment damaged by their employees.

Contractors are responsible to wear proper personal protective equipment required by the Affordable Solar job site and any State or Federal Regulations.

Also refer to Disciplinary Policy for Safety Violations #009

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: SAFETY FIRST REWARDS PROGRAM

Policy Eliminated

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

PROGRAM ADMINISTRATION PROCESS

1. Employees will submit their safety tips and positive observation of another co-worker to the EH&S Department via internet email or voicemail.
2. Supervisor or designees will submit incident reports to the EH&S department within time frame identified in SOP-3.
3. EH&S Department will keep track of the points earned by the employees.
4. EH&S Department will quarterly tabulate points earned by Affordable Solar sites and provide Managers with a progress report.
5. EH&S department will quarterly and annually identify sites with the highest points earned and will administer awards accordingly.

AWARD PERIOD

The period for earning the Certificate of Safety Excellence is based on working a full 12 months. January 1 – December 31, minus vacation and holiday's.

RESULTS REASSESSMENTS

Program effectiveness results will be assessed annually.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: RECEIPT AND HANDLING OF COMPRESSED GAS CYLINDERS

POLICY 030

REFERENCE: 29 CFR 1910.101, 29 CFR 1910.253 (b), NFPA 55
Compressed Gas Association (CGA) Pamphlets: C-6-1986, C-8-1962, P-1-1965

PURPOSE:
Serious accidents may result from the misuse, abuse, or mishandling of compressed gas cylinders. The purpose of this policy is to establish safe work practices for safe handling and storage of compressed gas cylinders.

SCOPE:
The information in this policy applies to all employees who in the course of their regular duties may occasionally receive and handle compressed gas cylinders.

RESPONSIBILITIES:

It is the responsibility of the EH&S Department to establish safe work practices for occasional receipt and handling of the compressed gas cylinders.

It is the responsibility of the Supervisor to implement developed work practices at each site involved in occasional receipt and handling of the compressed gas cylinders.

It is the responsibility of the employees to follow all safe work practices for receipt storage and handling of compressed gas cylinders outlined in this policy.

PROCEDURES:

1.0 Identification and Labeling

- 1.1 The contents of any compressed gas cylinder whether FULL of EMPTY must be clearly identified.
- 1.2 A durable label should be provided that cannot be removed from the cylinder.
- 1.3 No compressed gas cylinder should be accepted that does not legibly identify its contents by name.
  - 1.3.1 Color-coding is not a reliable means of identification; cylinder colors vary from supplier to supplier, and labels on caps have no value because many caps are interchangeable.
- 1.4 If the labeling on the cylinder becomes unclear, the cylinder should be immediately returned.

2.0 Transporting Gas cylinders

- 2.1 This section applied to all sites that may on occasion receive and handle compressed gas cylinders
- 2.2 It is the policy to receive only those compressed gas cylinders that have been emptied.
- 2.3 Only trained personnel should move the cylinders.
- 2.4 Only one cylinder should be handled (moved) at a time.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

2.5 Cylinder safety caps should be securely affixed during transport. A cylinder's cap should be screwed all the way down on the cylinder's neck ring and should fit securely.
2.6 Do not lift cylinders by the cap. The cap is for valve protection only.
2.7 Always use cylinder cart to move compressed gas cylinders. Always strap the gas cylinder to the cart in an upright position.
2.8 Never Slide, drag or roll cylinders on a cylinder edge.

3.0 Storage of Compressed gas cylinders

3.1 "NO SMOKING" signs must be posted in all areas where cylinders are being stored.
3.2 Always secure cylinders whether EMPTY or FULL, to prevent them from falling. Secure individual cylinders by chaining or strapping them to a wall, or other fixed support. For locations where more than one cylinder is located, appropriate racks or cages must be used.
3.3 Cylinders should never be dropped or struck violently.
3.4 Caps used for valve protection should be kept on the cylinders at all times.
3.5 Cylinders should be stored in a well-ventilated area away from flames, sparks, or any sources of heat or ignition. Keep cylinder away form electrical circuits.
3.6 Cylinders should never be exposed to an open flame or to any temperature above 125ºF.
3.7 Empty Oxygen cylinders should be stored in an area that is at least 20 feet away from any flammable or combustible materials or separated from them by a non-combustible barrier at least 5 feet high.
3.8 Empty cylinders may be stored outdoors in appropriate racks or cages, but they should be protected from the ground to prevent corrosion.
3.9 Where extreme temperatures prevail, cylinders should be stored so they are protected from the direct rays of the sun.
3.10 Cylinders should not be exposed to continuous dampness or stored near salt or other corrosive chemicals or fumes. Corrosion may damage cylinders and cause their valve protection caps to stick.
3.11 Always mark empty cylinders with a prominent sign saying "EMPTY".

4.0 Personal Protective Equipment

4.1 Always use PPE when handling compressed gas cylinders.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: STEEL ERECTION

POLICY 031

REFERENCE: 29 CFR 1926 Subpart R

PURPOSE
Affordable Solar must meet the requirements of OSHA's Steel Erection standard. Affordable Solar policy to protect our employees from the hazards associated with steel erection activities.

SCOPE
This policy applies to all Affordable Solar employees and subcontractors working within controlled job sites.

GENERAL
The Erection Plan addresses the phases of erection, procedures and equipment that will be used to best insure the erectors safety. The fall protection plan addresses the use of other than conventional fall protection at a number of areas on the project, as well as identifying specific activities that require non-conventional means of fall protection. These areas include:

- connection activity (point of erection)
- leading edge work
- un-protected sides or edges

RESPONSIBILITY:

1.1. Supervisors:

1.1.1. The assigned Competent Person is responsible for continual observational safety checks of work operations and to enforce safety policy and procedures.

1.1.2. Competent Person – It is the responsibility of Affordable Solar to designate a competent person to implement this plan. The competent person shall:

1.1.2.1. Inspect the jobsite daily for hazards

1.1.2.2. Correct any hazards identified

1.1.2.3. Notify the employees of correct procedures to be used to avoid identified hazards

1.1.2.4. Remain on the jobsite at all times that work is being performed under this plan.

1.1.2.5. The competent person is authorized to take prompt corrective measures and to make timely changes to this plan in order to insure the employee's safety.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

1.2. Employee

1.2.1. It is the responsibility of the employee to:

1.2.1.1. Understand and to adhere to the procedures of this plan and to follow the instructions of the competent person

1.2.1.2. Notify management of any unsafe or hazardous conditions or acts that may cause injury to either themselves or any other employees.

1.2.1.3. Employees are instructed not to perform any tasks that they feel are hazardous

1.2.1.4. Any changes to the fall protection plan must be approved by the Safety Dept.

1.2.1.5. Site Specific Conditions:

1.2.2. Equipment Required

1.2.2.1. Note – Crew assigned to the project must receive boom lift training prior to operating the boom lift

1.2.2.2. Only authorized and certified Fork truck operators are allowed to operate the Fork Trucks.

1.2.2.3. Erection Plan Phases

1.2.2.4. For the purpose of this plan 2 connectors will be designated and trained in the safe application of the plan.

1.2.2.5. Designated Connectors:

1.2.2.6. Name:

1.2.2.7. Name:

1.2.2.8. Where possible all connections will be performed from the platform of the scissor lifts. Connectors are instructed to attach their Personal Fall Arrest system to the rafter or other secure anchorage prior to leaving the guardrail protection of the scissor lift. Only when it exposes the connector to additional fall hazards of to fall hazards for a longer period of time, may these connectors have the authority to walkout without conventional fall protection. In all cases possible, personnel baskets will be strategically placed as catch baskets.

2. Fall Protection Systems to be used

2.1. Employees working on working surfaces at more than 15 feet are required to be protected by compliant guardrails or be wearing a personal fall arrest system (PFAS) connected to a compliant anchor.

2.1.1. Designated connectors must wear a PFAS at all times when working above 15 feet and attached to a compliant anchor when feasible.

2.1.2. Where conventional fall protection is infeasible or creates a greater hazard at the leading edge and during initial connecting activity, Affordable Solar plan to do the work using a safety monitoring system and expose only a minimum number of employees for the time necessary to actually accomplish the job. The maximum number of workers to be monitored by one safety monitor is 3. Affordable Solar is designating the following trained employees as designated erectors and they are permitted to enter the controlled access zones and work without the use of conventional fall protection.

2.1.3. For the purposes of leading edge work, leather shoes will be recommended.
2.1.4. Safety Monitor / Competent Person:
2.1.5. Only individuals with the appropriate experience, skills, and training will be authorized as designated erectors.
2.1.5.1. All employees that will be working as designated erectors under the safety monitoring system shall have been trained and instructed in the following areas:
2.1.5.1.1. Recognition of the fall hazards in the work area (at the leading edge and when making initial connections)
2.1.5.1.2. Avoidance of fall hazards using established work practices which have been made known to the employees
2.1.5.1.3. Recognition of unsafe practices or working conditions that could lead to a fall, such as windy conditions.
2.1.5.1.4. The function, use, and operation of safety monitoring systems, guardrail systems, body harness systems control zones and other protection to be used.
2.1.5.1.5. The correct procedure for erecting, maintaining, disassembling and inspecting these systems.
2.1.5.1.6. Knowledge of the construction sequence or erection plan

2.2. A conference will take place prior to starting work involving all members of the erection crew, and material handling crew.

2.2.1 This conference will be conducted by the supervisor in charge of the project. During the pre-work conference, erection procedures and sequences pertinent to this job will be thoroughly discussed and safety practices to be used throughout the project will be specified. Further, all personnel will be informed that the controlled access zones are off limits to all personnel other than those designated erectors specifically trained to work in that area.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: CONTROL OF HAZARDOUS ENERGY, LOCKOUT TAGOUT

POLICY 031

REFERENCE: 29 CFR 1910. 147

PURPOSE:

Affordable Solar Installation recognizes that energy isolation is an extremely important process to control accidental release of stored energy and considers energy isolation or Lock Out / Tag Out a critical risk activity. Therefore, we have created this program to provide guidelines that will help prevent the unexpected start-up, and/or release of stored energy while being serviced or maintained. Site Specific protocols will be enforced.

SCOPE:

This program applies not only to Affordable Solar Installation employees and our subcontractors, but all personnel that are authorized to perform maintenance and service activities on equipment or processes which present energy hazards and to any employees who are affected by these activities at Jicarilla 2 / West Solar Site. Examples of energy sources are but are not limited to:

- Electrical
- Mechanical
- Hydraulic
- Pneumatic
- Thermal
- Residual stored energy
- Gravity
- Pressurized liquids or gases
- Chemicals located within plant equipment, vessels, tanks, lines, and/or silos

RESPONSIBILITY:

Project Managers / site superintendent shall be responsible for ensuring employees comply with this program.

Supervisors shall:

- Ensure that employees who are authorized to service equipment have received general lockout/Tagout training, as well as specific energy isolation training on any individual piece of equipment or machine that is to be locked or tagged.
- Assign locks, if applicable, or tags to authorized employees.
- Coordinate activities of contractors that may affect Lockout/Tagout and energy control programs within the facility or on equipment.
- Ensure that only authorized employee's service equipment or machinery requiring Lockout/Tagout.

- Forward copies of the training forms to the Safety Department.

Employees shall be responsible for:

- Complying with this program.
- Following safe shutdown and start-up programs.
- Communicating activities to affected employees and other authorized employees, as appropriate.
- Ensuring the security of their own lock and key.
- Advising their supervisor when equipment needs servicing and following the directions of the authorized employee affecting the use of that equipment.

The Safety Department shall develop and maintain the Energy Isolation Program and shall audit and review the effectiveness of the program at least annually.

OBJECTIVE

This program is designed to supplement the complete elimination of stored energy by administering a lock-out protocol as a secondary method of isolating machines or equipment from energy sources. If tags are used, additional steps shall be taken as necessary to provide the equivalent safety available from the use of a lock-out device.

The objective of this program is to identify the hazards of uncontrolled energy and establish programs for safe Lockout/Tagout operations.

DEFINITIONS:

- **Affected employee** -- An employee whose job requires him or her to operate or use a machine or piece of equipment on which service or maintenance is being performed under Energy Isolation, or whose job requires him or her to work in an area in which such service or maintenance is being performed. Affected employees must be informed when lockout/tagout is being performed.

- **Authorized employee --** An employee who performs service or maintenance on machines and equipment. Energy Isolation is used by these employees for their self-protection. This employee shall have direct and complete knowledge of the equipment that they are shutting down and understand all of the potential energy sources and the magnitude of each source.

- **Energized --** Machines and equipment are energized when they are connected to an energy source or they contain residual or stored energy.

- **Energy --** The movement or possibility of movement in equipment or machinery. Whether the power switch is on or off, energy always is present in any powered equipment.

- **Energy isolating device --** Any mechanical device that physically prevents the transmission or release of energy. These include, but are not limited to, manually operated electrical circuit breakers, disconnect switches, line valves and blocks.

  NOTE: Push buttons, selector switches, and other control circuit type devices are not energy isolating devices.

EH&S OPERATING POLICIES AND PROCEDURES

Affordable Solar

- **Energy source --** Any source of electrical, mechanical, hydraulic, pneumatic, chemical, thermal or other energy.

- **Energy control program --** A written document that contains those items of information an authorized employee needs to know in order to safely control hazardous energy during servicing or maintenance of machines or equipment.

- **Lock-out --** The placement of a lock-out device on an energy isolating device, in accordance with an established program, ensuring that the energy isolating device and the equipment being controlled cannot be operated until the lock-out device is removed.

- **Lock-out device --** Any device that uses positive means, such as a lock with either a key or combination, to hold an energy isolating device in a safe position, thereby preventing the energizing of machinery or equipment. When properly installed, a blank flange or bolted slip blind are considered equivalent to lock-out devices.

- **Normal production operations --** The utilization of machine or piece of equipment to perform its intended production function.

- **Servicing and/or maintenance --** Workplace activities such as constructing, installing, setting up, adjusting, inspecting, modifying, and maintaining and/or servicing machines or equipment. These activities include lubrication, cleaning or unjamming machines or equipment, and making adjustments or tool changes, where the employee may be exposed to the unexpected energization or start-up of the equipment or release of hazardous energy

- **Setting up --** Any work performed to prepare a machine or piece of equipment to perform its normal production operation.

- **Tagout --** The placement of a tagout device on any energy isolating device, in accordance with an established program, to indicate that the energy isolating device and the equipment being controlled may not be operated until the tagout device is removed.

- **Tagout device --** Any prominent warning device, such as a tag and a means of attachment that can be securely fastened to an energy isolating device in accordance with an established program. The tag indicates that the machine or equipment to which it is attached is not to be operated until the tagout device is removed in accordance with the energy control program.

EH&S OPERATING POLICIES AND PROCEDURES

Affordable Solar

PROGRAM & SAFE WORK PROCEDURES:

1. **Methods of lock and tag identification**

1.1 Lockout/Tagout devices shall be standardized within each facility in at least color, shape or size, and shall be durable for withstanding the environment to which they are exposed for the maximum period of time exposure is expected.

1.2 Identifiable devices shall indicate the identity of the:

1.2.1 Locks, which are numbered sequentially (1, 2, 3, etc.), will be used, if available. If locks are used, one key shall be issued to the employee and the second key shall be destroyed. This maintains the "One Lock / One Person / One Key" integrity and minimizes accidental or unintentional lock removal.

1.2.2 Tags - For tag-out devices, a standardized print and format shall be used. The print shall be legible and understandable to employees. The information on the tag shall be the employee and company name; crew; supervisor; phone number; equipment being worked upon and reason for lockout. Photos attached to custom tags are recommended but not required. Tags shall be secured by a nylon self-locking tie, or attached with the LOTO lock which requires either cutting the nylon self-locking tie or opening of the LOTO lock in order to remove.

2. **Periodic inspections**

2.1 Periodic inspections shall be conducted at least annually and shall be performed by an authorized employee other than those utilizing the energy control program under inspection. The purpose of each inspection shall be to:

2.1.1 Identify and correct any deviations or inadequacies observed.

2.1.2 Review each authorized employee's responsibilities under the Energy Control Program.

2.1.3 Review the limitations of tags if tag-outs are used.

2.2 Acquiring locks and tags

2.2.1 Supervisors shall provide the necessary equipment to perform lock-out and tag-out procedures.

3. **Energy Isolation Program – shutdown**

3.1 All electrically powered equipment or power circuits shall be De-energized before any work is performed. All circuits shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individual(s) working on it.

3.2 The authorized employee shall make a survey to locate and identify isolating devices to be certain which switch (s), or other energy isolating devices apply to the equipment to be locked out or tagged out.

NOTE: If more than one hazardous energy source (including stored) and/or means of disconnect (electrical, mechanical, or others) may be involved, Section 5.4.1 shall be followed; otherwise, Section 5.4.2 shall apply.

3.3 Affected employees shall be notified that the Energy Isolation Program system will be utilized and the reason.

3.4 If the machine or equipment is operating, it shall be shut down by the normal stopping program. This shall usually be done by depressing the stop button, opening the toggle switch, etc. In addition, the employee shutting down the machine shall ensure that stored energy is dissipated or properly restrained.

3.5 The nearest power / energy source or supply (breaker, switch, circuit, valve or similar) shall be identified, turned off or disconnected to isolate the equipment from being energized. Alternate power sources shall also be identified and disconnected. Affected personnel shall have the opportunity to witness and take part in this process.

3.6 The switch, valve, or other energy isolating devices(s) shall be operated to release any stored energy and to assure that the equipment is isolated from its energy sources(s) and no alternate or back fed sources exist.

3.7 Energy Isolation device application

3.7.1 Locks/UV Rated Cable Ties and tags shall be affixed to each energy-isolating device only by an authorized employee and each authorized employee shall apply their own individual lock.

3.7.2 Locks/UV Rated Cable Ties and tags shall be singularly identified.

3.7.3 Locks/UV Rated Cable Ties and tags shall be affixed in a manner that will hold the energy isolating devices in a safe or off position.

3.7.4 Tags that cannot be affixed directly to the energy-isolating device shall be located as safely as possible to the device in a position that will be immediately obvious to anyone attempting to operate the device.

3.7.5 After isolation devices have been applied the equipment or system shall be tested to verify isolation and zero energy.

3.8 All personnel that need to work on or in proximity to the equipment shall place a lock or UV rated Cable Tie or lock out device. For situations where multiple persons or companies need to work on the equipment, a lock out box may be utilized in which the lock out supervisor or Energy Control Coordinator affixes their lock on the lock out device and places all of the lock out key(s) into the lock box and affected personnel may place their locks on the box instead of the lock out device. The lockout supervisor or Energy Control Coordinator shall over see this process.

3.9 All personnel that have a need to apply a lock to the equipment shall be recorded on a log maintained by the lock out supervisor or Energy Control Coordinator. For general notification, the name and description of the equipment that has been locked or tagged out may be recorded on a bulletin board.

3.10 In the event of a shift change the lock out supervisor or Energy Control Coordinators shall oversee the lock removal process and the application of the locks of the oncoming employees. This care and Control will be transferred from the outgoing and oncoming shift's supervisors or Energy Control Coordinators.

4. Energy Isolation Program - start-up

4.1 After the servicing and/or maintenance is complete and equipment is ready for normal production operations, the area around the machines or equipment shall be checked to ensure that no one is exposed to an uncontrolled energy source.

4.2 After tools have been removed from the machine or equipment, guards have been reinstalled, and employees are in the clear, lock-out or tag-out devices shall be removed and the affected employees shall be notified of the removal.

4.3 Lockout/Tagout devices shall be removed from each energy isolating device only by the employee who applied it.

4.4 In the event that a start-up is necessary and an employee leaves a lock applied and is not on the project site, the lock out supervisor or Energy Control Coordinator may remove the affected employee's lock if all of the following conditions are met:

- 4.4.1 The equipment or controlled area has been thoroughly walked down to ensure that the employee is not present in or near the equipment or controlled area.
- 4.4.2 Verification is made that the employee is not at the facility.
- 4.4.3 All reasonable efforts are made to contact the employee in to verify that they are away from the facility and to inform them that their lock is going to be removed in their absence;
- 4.4.4 The site Project Manager and client / owner Project Manager have been informed and authorize the lock removal.
- 4.4.5 Upon returning to the facility, if allowed, the employee is informed that his/her lock has been removed.

4.5 Testing or positioning machines, equipment, or components

- 4.5.1 In situations where Energy Isolation devices are temporarily removed from the energy isolating device and the machine equipment energized to test or position the machine, equipment or component, this sequence of actions shall be followed:
  - 4.5.1.1 The machine or equipment shall be cleared of tools and materials.
  - 4.5.1.2 Employees shall be removed from the machine or equipment area.
  - 4.5.1.3 Energy Isolation devices shall be removed.
  - 4.5.1.4 Energizing shall be completed, and testing or positioning shall be conducted.

4.5.1.5 Systems shall be De energized and energy control measures shall be reapplied in accordance with the shutdown programs described in this section.

4.6 Informing outside contractors

4.6.1 The supervisor shall inform outside contractors of the elements of this program and obtain information regarding their Energy Isolation program. This information shall then be conveyed by the supervisor to affected (Company) employees

TRAINING

4.7 All employees shall receive general lockout/tag-out/tryout training by an instructor that has updated NFPA 70e certification, as part of their orientation, as well as specific energy isolation training on any individual piece of equipment or machine that is to be locked or tagged prior to working on that piece of isolated equipment.

4.8 Training shall include the following information at a minimum:

4.8.1 The recognition of potential energy sources, the possible magnitude of each energy source, and the means and methods to control each source.

4.8.2 The purpose and use of energy control procedures.

4.8.3 The procedure and about the prohibition relating to attempts to restart or reenergize machines or equipment which are locked out or tagged out.

4.8.4 The limitations and requirements of tag-out as an exclusive means of energy isolation.

4.8.5 Retraining shall be provided whenever there is a change in job assignments that necessitate additional training, change in equipment or systems, new hazards or control procedures.

4.8.6 Retraining shall also be provided when the annual evaluation or routine observation indicates that there is a reason to believe that the execution of the program or employee knowledge is inadequate.

4.8.7 Training shall be documented to include the employee's name, last 4 digits of the social security number or other unique identifier, date, name of the person conducting the training.

4.9 TRAINING AND COMPETENCIES:

4.9.1 In general, the level of training provided must be adequate for the tasks involved in order to insure that work is performed in a safe manner:

4.9.2 QUALIFIED and AUTHORIZED PERSONS shall be trained and knowledgeable of the construction and operation of the equipment and the hazards involved.

4.9.3 NON-QUALIFIED and AFFECTED employees shall be trained in any safety-related practices necessary to ENSURE their safety, but are not

authorized to work on or near ENERGIZED parts nor have exposures to the potential release of energy from any form of ENERGY SOURCE.

4.9.4 The Employer shall determine that each employee is complying with the safety-related work practices required here-in through:

4.9.4.1 Regular Supervision, and
4.9.4.2 PERIODIC INSPECTIONS (Appendix C)

4.9.5 Employees shall receive LOTO training annually and shall receive additional training if:
4.9.5.1 Either supervision or PERIODIC INSPECTIONS identify a deficiency.
4.9.5.2 New technology or equipment is applied or if procedures are changed.
4.9.5.3 The employee must apply LOTO PROCEDURES not normally used during his/her regular job duties.
4.9.5.4 Employees performing LOTO PROCEDURES less than once a year should be retrained before performance of work.

4.9.6 LOTO training shall be either of classroom type or on the job and must be documented in either case.

4.9.7 LOTO training shall:
4.9.7.1 Establish the employee's proficiency in the LOTO PROCEDURES. The employer shall CERTIFY the employee performing ENERGY ISOLATION PROCEDURES clearly understands the scope, purpose, authorization, rules and techniques to be utilized for the control of the ENERGY SOURCE.

4.10 Records of training shall be maintained on each AUTHORIZED PERSON.

4.10.1 Training shall be provided annually for all ASI employees to ensure that the purpose and function of the energy control program are understood and the knowledge and skills required for the safe application and usage are acquired by the employees. The training shall be documented and shall consist of:
4.10.2 The Lockout/Tagout procedures including:

4.10.2.1Scope
4.10.2.2Clearance request & requestor procedures
4.10.2.3Clearance steps & application
4.10.2.4Clearance documentation
4.10.2.5Testing & inspection
4.10.2.6Definitions

4.10.3 The type and magnitude of the energy available in the workplace
4.10.4 The limits and functions of the different LOTO devices
4.10.5 Safety related work practices involved in performing work task

4.11 New employees or employees transferred from other areas shall receive training specific to the sections above before the employee participates in any activities detailed therein.

Affected employees shall be instructed about the procedure and about the restrictions relating to attempts to restart or re-energize machines or equipment which are locked out or Hold Carded.

4.11.1 In addition:

4.11.1.1 Qualified employees shall complete the requirements of Regulated Generation Electrical Safe Work Practices Employee Training on an annual basis.

4.11.1.2 Qualified employees applying electrical and non-electrical isolation procedures shall be trained, qualified and certified in the application of those procedures.

ISOLATION FOR ELECTRICAL TESTING OF LOW VOLTAGE MCC CONTROL CIRCUITS:

It is recognized that:

- Instrument/Electrical (I/E) personnel will need to complete electrical testing on 480 control circuits fed from MCCs (buckets) during the course of normal maintenance procedures or subsequent to new construction or renovation.
- In this case, the "Primary Disconnect" (the molded case circuit breaker located in the MCC bucket, etc.) will need to be closed in order to energize the controls and test the circuit. This must be achieved without voiding CLEARANCE integrity for those who are protected from the potential release of hazardous energy by the isolation of the "Primary Disconnect".
- For this situation, CLEARANCE may be transferred from the original point of isolation to the disconnected circuit leads. The requester must contact and satisfy all other personnel who currently have CLEARANCE applied to the equipment that testing may be completed in a safe manner that will not void their CLEARANCE and that the point of electrical isolation is being transferred to the disconnected leads from the breaker. Each of these personnel must contact the AA to accept the testing under their CLEARANCE before the requester may be allowed to conduct the testing.
- Documentation of this activity shall be accomplished through use of the "Lockout/Tagout Variance" form in Appendix E.

EH&S OPERATING POLICIES AND PROCEDURES

Affordable Solar

TEMPORARY GROUNDING FOR THE PROTECTION OF EMPLOYEES

In general, only QUALIFIED Instrument/Electrical (I/E), or Substation Maintenance Personnel responsible for the application of grounds and grounding devices shall apply grounds at Regulated Generation facilities. **Grounding practices shall be consistent with the Health and Safety Manual.**

1. Grounding for Electrical Protection:

1.1 Hold Cards shall be applied to the grounds.
1.2 Operations personnel shall be responsible for installation or removal of grounds only when ground application is made with a switching device such as ground disconnects or switchgear ground and test device. When safety grounds cannot be applied with a switching device, appropriate QUALIFIED maintenance personnel will apply and remove the safety grounds.

2. Static Grounds:

2.1 Any personnel specifically QUALIFIED may complete specific grounding operations on tools and equipment for the purpose of grounding for static protection.
2.2 Hold Cards shall not be required for the purpose of grounding for static protection.

LOCKOUT OF NON-GENERATING EQUIPMENT

If an energy isolating device of non-generation equipment is capable of being locked, then it shall be locked. Tracking of locked equipment shall be accomplished per section Hold Card Description – A.3.b. Isolation tracking of locked, non-generation equipment by means of the MTCM may be waived by the plant management for maintenance shop tools used on a routine basis. The energy isolation procedures outlined herein do not preclude any requirements under NFPA-70E.

This procedure establishes specific Lockout criteria for hazardous energy isolation of **non-generation**, transmission and distribution equipment. Specifically, it applies to the control of energy during servicing and/or maintenance of non-generation machines and equipment that can be locked out, i.e., machines or equipment in which the unexpected energization or start-up, or release of stored energy could cause injury to employees.

NOTE – Exception to the above: If an energy isolating device is not capable of being locked out, the Hold Card procedure shall be followed. Any non-generation equipment that is replaced undergoes major repairs, renovation, or modification shall be designed to accept a lockout device.

Routine operation of non-generating equipment, i.e. servicing and/or maintenance, are not covered by this procedure unless:

- An employee is required to remove or bypass a guard or other safety device, or
- An employee is required to place any part of their body into the point of operation or where an associated danger zone exists during a machine operating cycle.

NOTE – Exception to the above: Minor tool changes and adjustments, and other minor servicing activities that take place during normal operations of the affected component are not covered by the procedure if they are routine, repetitive, and integral to the use of the equipment for operation, provided that the work is performed using alternative measures which provide effective protection.

Work on 120/220 volt cord and plug connected electric equipment for which exposure to the hazards

of unexpected energization or start-up is controlled by unplugging the equipment from the energy source does not require lockout as long as the plug is under the exclusive control of the employee performing such work (line of site).

CAUTION – Cord and plug connectors greater than 220 volts cannot be disconnected unless the energy source to the plug has been isolated and locked out per the procedures stipulated by this document

Employee Responsibility

- AUTHORIZED PERSONS are required to lockout and tagout machinery and equipment and restore it to service in accordance with OSHA requirements and Regulated Generation's Lockout, Tagout procedures.
- No employee shall attempt to start, energize, or use any machine or piece of equipment that is locked or tagged out.
- Each employee must comply at all times with provisions of this lockout, tagout program, the OSHA lockout, tagout standards, and all rules, regulations and orders that are applicable to their own actions and conduct.

Lock Identification: See Appendix F.

Lockout Procedures

Electrical Lockout

1. Request
   1.1 Requester contacts the "Administrative Authority" and requests electrical clearance on **non-generation** equipment.
   1.2 Requester shall give a reason for the clearance request of this equipment.

2 Order
   2.1 Only the major points of isolation shall have a lock applied. For example, the 480 volt breaker will be locked, but the control switch would not be locked.
   2.2 If the equipment or device can be removed from service, the Administrative Authority will have equipment isolated and locked with Operation's lock and Hold Card. The lock shall be applied to a safety lockout hasp.
   2.3 An Operation's lock, when used, will be first on and last off. While the Operation's lock is on an energy isolating device, the lock's key shall be maintained by the AA in a designated area and shall have a hold card affixed to the lock as a means of identification.

3 Order Complete
   3.1 After the designated AUTHORIZED PERSON has performed the necessary functions and the Operation's lock is in place, they shall report to the AA that the equipment has been locked and carded.

4 Request Granted
   4.1 After the card is logged in the appropriate log, the AA will issue clearance authority to the requester that they may now hang their lock.
   4.2 The requester will hang their individual lock.

NOTE – If more then one individual is required to service or maintain machinery or equipment, each employee shall follow the above procedure and request clearance and hang their lock.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Mechanical Lockout

- Shall be the same as Electrical Lockout.
- Valves for water, hydraulic pressure, or other sources of energy shall be locked when applicable. When there are double valves, at least one shall be locked.

Restoring Equipment To Service

When the job is completed and the equipment is all clear, the holder of the clearance authority shall remove their identified lock and notify the "Administrative Authority". The AA may then order the Operation's lock to be removed if appropriate.

Inspect the work area to ensure that:

- all non-essential items have been removed
- the machine or equipment components are operationally intact
- no personnel are exposed to any hazards

After all locks have been removed and the area has been inspected, the MTCM (if required) may be restored and equipment made ready for testing and/or normal service.

New Construction Lockout Procedures and Authority

Turn Key Projects

This shall be defined as projects such as the addition of a new generation unit, large pollution control retrofit project, or other large scale projects not managed by the Stations. This option may be applied with the approval of the Plant General Manager and the Director of the department managing the Turn Key Project and requires the approval of both.

1. The General Contractor for the major project shall act as the Lockout Authority and shall supply CLEARANCE AUTHORITY, SWITCHING AUTHORITY and QUALIFIED PERSONS consistent with this ASI Regulated Generation Lockout Tagout Policy.
2. All contract employees and ASI personnel shall request and receive clearance on equipment through lockout procedures from the general contractor's Administrative Authority until the Facility Manager has accepted the transfer of authority over the equipment or system from the general contractor.
3. A specific list of the equipment transferred to the authority of the Plant General Manager shall be maintained by the facility's Administrative Authority, the department managing the Turn Key Project, and the general contractor's Administrative Authority to ensure that effective Energy Isolation and Lockout Authority is maintained for all equipment during the entire project.

EH&S OPERATING POLICIES AND PROCEDURES

Affordable Solar

Operational Control and Lock-Out/Tag-Out Authority at Generating Stations

Purpose

Generating Stations generate power into the Transmission/Distribution Systems and receive auxiliary power from the Transmission/Distribution Systems. The purpose of this document is to define Operational Control and Lock-Out/Tag-Out Authority (LOTA) of assets needed to generate power into the Transmission/Distribution Systems and receive auxiliary power from the Transmission/Distribution Systems. This document will also define additional requirements for LOTA of assets/operating equipment at generating stations.

Operational Control and Lock-Out/Tag-Out Authority

- Transmission System Control Center (TSCC) shall have operational control and lock-out/tag-out authority of all assets at or above 69KV. Generation shall have operational control and lock-out authority of generation owned assets below 69KV.

- Operational control does not necessarily define who actually operates the asset. Operational control defines control responsibility. TSCC has, for example, operational control of the Mill Creek 345KV generator primary circuit breakers. TSCC grants Mill Creek the permission to close a 345KV breaker during the synchronization of a generating unit to the Transmission System.

- TSCC and Generation shall have joint operational control and joint lock-out authority of all Transmission interface assets and some Distribution interface assets. An interface asset in this document is defined as a Transmission or Distribution assets that when carded provides clearance and isolation of generation assets from the Transmission or Distribution System. Appendix A lists Transmission interface assets with shared operational control and shared lock-out authority.

Some generating plants have auxiliary loads that are powered from Distribution lines. Distribution Dispatch have sole operational control and sole lock-out/tag-out authority of the last overhead Distribution lines disconnect (interface assets) feeding a Generation load. Generation and Distribution Dispatch will have joint operational control and joint lock-out authority of non-overhead interface assets disconnects.

All interface assets can only be operated after notification of Generation and TSCC or Generation and ASI Distribution Dispatch. If an interface asset can be energized from both Generation and Transmission/Distribution, clearance must be given from both Generation and Transmission/Distribution before maintenance can begin on an interface asset.

Employees and/or contractors that are performing work on an asset and require clearance from the lock-out/tag-out authority for that asset shall follow the policy and procedures of the respective lock-out/tag-out authority. When the work involves an asset that has energy sources under the responsibility of multiple lock-out/tag-out authorities, the PERSON IN CHARGE of the work shall obtain clearance from each authority before starting work. When more than one department (Generation/Transmission/Distribution) requests clearance for the same asset at the same time, the PERSON IN CHARGE from each department will request and obtain separate clearance from each authority involved. For example, a Distribution employee in charge of work on Transmission interface assets during a unit outage will request and obtain required clearance from the TSCC and the local plant authority. That Distribution employee will not work under the clearance obtained by a Generation employee. Personal grounds can only be added while having clearance on an asset. Personal grounds must be removed before releasing clearance back to the lock-out/tag-out authority.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX T

LOCKOUT/TAGOUT PROCEDURE ACKNOWLEDGMENT
For Contractors to designate "PERSON IN CHARGE"

I, _____, affirm that I am the duly

AUTHORIZED _____ of

_____; (hereinafter the "Independent Contractor") and as such, have full authority to bind the Independent Contractor. On behalf of the Independent Contractor, I acknowledge that the Independent Contractor is fully aware of the LOCKOUT/TAGOUT Procedure and will strictly observe its requirements. In the event that the Independent contractor should ever breach this procedure, such breach will provide ASI with a right to immediately terminate any contract or agreement relating to goods or services being supplied by the Independent Contractor at the

_____ Generating Station. In the event the Independent Contractor uses subcontractors in supplying such goods or services, the Independent Contractor shall be jointly and severally responsible for compliance by such subcontractors with the LOCKOUT/TAGOUT Procedure.

List below those persons authorized to Hold Card:

Name	24hr Phone Number	Signature
Name	24hr Phone Number	Signature
Name	24hr Phone Number	Signature
Name	24hr Phone Number	Signature
Name	24hr Phone Number	Signature

Work dates from _____ to _____

EH&S OPERATING POLICIES AND PROCEDURES

Affordable Solar

Appendix U

Periodic Inspection Certificate

Pursuant to 29 CFR 1910.147 (c)(6) the employer shall conduct a periodic inspection of the energy control procedures at least annually to ensure the procedures and requirements of the Control of Hazardous Energy standard are being followed.

Date of periodic inspection: _____

Name of authorized employee conducting the inspection:

_____

Pursuant to 29 CFR 1910.147(c)(6)(i)(A) the inspection shall be performed by authorized employee other than one who actually uses the energy control procedures being inspected.

SPECIFIC IDENTFIER OF MACHINE OR EQUIPMENT

Pursuant to 29CFR1910.147(c)(6)(ii) the employer shall identify each and every machine or piece of equipment on which energy control procedures are being utilized.

Specific identifying characteristic or number: _____

_____

_____

EMPLOYEES(S) PERFORMING LOCKOUT/TAGOUT PROCEDURES

Pursuant to 29 CFR 1910. 147c (6)(i)(c) & (d) Where Lockout and/or Tagout is used for energy control, the periodic inspection shall include a review, between the inspector and each authorized employee, of that employee's responsibilities (job duties) under the energy control procedure being inspected.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Employee name(s)	Employee(s) signature

Deficiencies Revealed as a Result of the Inspection	**Corrective Actions Taken**

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX V

Lockout / Tagout of Radiation Sources to Prevent Employee Exposure

1. The facility's RSO (Radiation Safety Officer), or in their absence, a QUALIFIED User, shall be contacted before beginning work on or around nuclear devices where it is possible for any portion of an individual's body to receive exposure to the radiation beam from the device.
2. Where the RSO determines that exposures are possible during the proposed work process, the RSO (or designated QUALIFIED User under the radiation Safety Standard) shall switch the radiation source to its closed or off position and apply any specific testing required under the Radiation Safety Requirements to ENSURE its isolation.
3. An AUTHORIZED PERSON shall apply a lock or a Hold Card to the closed and tested radiation source for the AA.
   - 3.1 Tagout shall be applied to radiation sources associated with GENERATION EQUIPMENT.
   - 3.2 Lockout shall be applied to radiation sources associated with NON-GENERATION EQUIPMENT and all Marine Standard related equipment.
4. All workers with potential exposures must request CLEARANCE through established procedures. Then and only then will the employees be allowed to start that portion of their work where exposures have been deemed possible by the RSO.
5. When the workers have completed their tasks and released their CLEARANCES through established procedures the AA shall inform the RSO/QUALIFIED User that the job is complete. The AA shall then designate an AUTHORIZED PERSON to remove the Hold Card and lock.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX W

ASI
Lockout/Tagout Variance

Location: _____ Unit: _____
Work task: _____ Date: _____

Description of work:

Reason for variance:

Description of variance and duration requested:

_____ _____
Manager requesting variance Department Supervision

_____ _____
Safety Officer Senior crew member on equipment

_____ _____
Senior crew member on equipment Senior crew member on equipment

_____ _____
Senior crew member on equipment Senior crew member on equipment

_____ _____
Superintendent OPS Manager/Appointed Designee

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

APPENDIX X

Lock Identification

1. Physical Description

   1.1 Only locks designed for the purpose of LOCKOUT shall be used. Any person who is aware of any lock being used for lockout that does not satisfy the following requirements must immediately report the finding to their Supervisor. That Supervisor shall take immediate steps to ENSURE that the lock in question meets the proper requirements or that a suitable replacement lock is provided.
   1.2 These locks have been determined to be capable of withstanding the environment to which they are exposed for the maximum period of time that exposure is expected.
   1.3 These locks are of such construction as to prevent removal when in place by any means (other than the regular key) without the use of excessive force or unusual techniques (such as with the use of bolt cutters or other metal-cutting tools).

2. Identification

   2.1 Each person's lock(s) shall be uniquely keyed.
   2.2 There shall be **no** master key.
   2.3 Locks are identified as:

   - Operation's locks shall be uniform in color.
   - Locks for the Maintenance Groups (Mechanical, Instrument, Electrical) can be any color as determined by the facility.
   - All personal locks shall be identified by having the employee's name on the lock.

3. Each facility will maintain an ample number of locks, and supply as needed to their AUTHORIZED PERSONS.

   It is required that whenever locks are used to provide energy isolation, that Hold Cards with MTCM s be issued first. Persons placing their personal lock(s) must first have signed on the MTCM and received CLEARANCE.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Appendix Y

SPECIFIC ENERGY CONTROL PROCEDURES
FOR EACH PIECE OR TYPE OF MACHINE OR EQUIPMENT

Procedure Number: _____ Date: _____

Completed By: _____

Machine(s) or Equipment utilizing this procedure: _____

Number of Locks required: _____

Other Lockout Devices required:_____

PROCEDURES FOR CONTROLLING HAZARDOUS ENERGY

1. Source(s) of Hazardous Energy (Check (✓) all that apply).

___Electrical	___Natural Gas	___Springs
___Hydraulic	___Gravity	___Steam
___Chemical	___Pneumatic	___Thermal
___Other: _____		

2. Notify affected employees that the machine/equipment is about to be shut down and locked out.

Specific Instructions:

3. Shut down the machine/equipment using normal stopping procedures.

Specific Instructions:

_____

4. Isolate all energy sources listed above.

Specific Instructions:

_____

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Appendix Z

Lockout Removal Record

Date:_____Time: _____ Equipment: _____

Name of Lock owner/Originator:_____

Has the Owner/Originator been located? Yes / No

If No, Why? _____

Reason Lock was not removed:

_____

_____

_____

Name of person cutting or removing lock/tag/lockout devices:

_____

I, certify that equipment / process and personnel safety have been assured and that the above lock/tag/lockout device may be safely removed.

Signature: _____

Job Title: _____

The above listed lock owner/ originator was informed that his/her lock had been removed on (date) _____

By (name & job title)_____

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Appendix AA

CONTROL OF HAZARDOUS ENERGIES- ABANDONED LOCK REMOVAL FORM				
This form is to be used any time a Lockout/Tagout (LOTO) device is to be removed by someone other than the person who placed the LOTO device. The person removing the LOTO device must be directed to do so by management. Failure to follow and document the appropriate steps to remove a LOTO device can result in disciplinary action up to and including termination.				
DATE:			**TIME:**	
1.	**Name of LOTO device owner whose lock/tag is to be removed:**			
2.	**LOTO device owner's cell phone/ contact info:**			
3.	**LOTO device owner's Supervisor:**			
4.	**Document attempt to contact LOTO device owner.**			
	DATE/TIME	**METHOD OF ATTEMPTED CONTACT**	**RESULT**	
	1.			
	2.			
	3.			
5.	**Reason for removing lock (LOTO device owner is absent from work, has family emergency and can't remove lock, or is no longer with company)**			
6.	**Evaluate the entire affected system to ensure employees' safety before LOTO device is removed. LOTO device(s) removed by:**			
	Removed by (Print):		**Observed by (Print):**	
	Supervisor's (or designee) Signature:		**Authorized Employee's Signature:**	
	Date/Time::		**Date/Time:**	
7.	**EHS Representative informed (i.e. email or phone call/message) that an ABANDONED LOTO device is going to be removed and abandoned lock removal form is completely filled out.**			
	EHS Representative Notified:			
	Date:		**Time:**	
Method of notifying LOTO device original owner and their supervisor that the LOTO device was removed prior to beginning their next shift				

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Appendix BB

- **ASI's LOTO procedures have been reviewed**
  - **All power sources have been identified**
  - **Each employee's duties have been identified**
  - **Emergency Procedures have been reviewed**
  - **A person who is currently certified in CPR and FirstAid has been identified**

Date In	Date Out	Employee Name	Panel/ Equipment	Circuits	Lock Number

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: WORKPLACE VIOLENCE PREVENTION POLICY

POLICY 033

PURPOSE:
It is the intent of Affordable Solar to provide a safe and secure environment for all employees, visitors and contractors by establishing preventative measures, holding perpetrators responsible, and providing assistance and support to victims.

SCOPE:
This policy specifically addresses the Affordable Solar position on the prevention, and management of violence to provide a safe working environment for all employees at all Affordable Solar owned, controlled, or leased properties.

RESPONSIBILITY:
Affordable Solar does not tolerate acts of violence or hostility committed by or against employees, temporary employment agency workers, contractual workers, visitors, customers, or other third parties on Affordable Solar owned, controlled, or leased properties, or while conducting Affordable Solar business at other locations.

It is the responsibility of all Affordable Solar employees to take any threat or violent act seriously and to report acts of violence or threats to the appropriate authorities as set forth in this policy.

Human Resources will coordinate employee-related preventative measures, including conducting criminal conviction checks n accordance with Affordable Solar policy, providing awareness programs to new employees, coordinating referrals to the employee assistance program.

EH & S Department will:

- Develop and coordinate the Affordable Solar emergency response plans,
- Develop and coordinate a plan for awareness and training programs for employees.

It is the responsibility of Affordable Solar to:

- Provide, develop and maintain the Workplace Violence Prevention Program
- Verify that training has been provided to each employee.

It is the responsibility of management to:

- Utilize management strategies to identify and prevent incidents of workplace violence.
- Reduce the effects of violence on victims
- Provide consequences to those who threaten or perpetrate violence.
-

It is the responsibility of the employees to:

- Comply with all procedures outlined in this policy.

All Affordable Solar managers, and employees are responsible for reporting indications of possible hostile behavior, and must not be subjected to any acts of retaliation for reporting concerns.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Affordable Solar will use all available resources such as law enforcement, all applicable human resources and policies in responding to alleged acts of violence.

1. DEFINITIONS:

An **at-risk individual** is defined as an employee, or other person who is a potential target or victim.

Assault is committed when one person
1. Tries to or does physically strike another,
2. Acts in a threatening manner to put another in fear of immediate harm.

Aggravated assault is defined as a completed or attempted attack with a weapon and an attack without a weapon in which the victim is seriously injured.

Affordable Solar property is defined as any location, either permanent or temporary, owned or leased by Affordable Solar . This includes, but is not limited to, the buildings, grounds, and the surrounding perimeters, including the parking lots, field locations, and alternate work locations.

A **credible threat** of violence is defined as a knowing and willful statement or course of conduct that would cause a reasonable person to believe that he or she is under thereat of death or serious bodily injury or harm. A course of conduct is any series of acts over a period of time, however short, that evidences a continuity or purpose such as following or stalking and individual to or from the workplace, telephone calls to the employee, and correspondence with the employee or student, whether by public or private mail, e-mail, interoffice mail, or fax.

Firearms are defined as any gun, rifle, pistol, or handgun designed to fire bullets, BBs, pellets, or shots, including paint balls, regardless of the propellant used.

An **intimidation** is engaging in actions that include, but are not limited to stalking or behavior intended to frighten, coerce, or induce duress.

Physical Attack is unwanted or hostile physical contact such as hitting, fighting, pushing, shoving or throwing objects.

Property damage is intentional damage to property and includes property owned or leased by Affordable Solar employees, visitors, temporary agency employees performing work for Affordable Solar .

Sexual Assault is defined as any forcible sexual activity that occurs without the consent of the victim. It includes, but is not limited to, unwanted kissing and fondling, forcible vaginal, oral, or anal intercourse, and forcible penetration with an object or finger.

Consent is an agreement reached without force, coercion, or intimidation between persons. Forcible sexual activity occurs when consent is not reached or when the victim is mentally incapacitated or physically helpless.

Stalking is defined as repeatedly contacting another person when the contact is unwanted. Additionally, the contact may cause the other person reasonable apprehension of imminent physical harm or cause substantial impairment of the other person's ability to perform the activities required of daily life. Contact includes, but is not limited to communicating with (either in person, by

phone or computer) or remaining in the physical presence of the other person.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Third parties are individuals who are not Affordable Solar employees, such as relatives, acquaintances, contractual workers, vendors, visitors, customers or strangers.

A **threat** is the expression of intent to cause physical harm. An expression constitutes a threat without regard to whether the party communicating the threat has the present ability to carry it out, and without regard to whether the expression is contingent, conditional, or future.

Violence includes, but is not limited to, intimidation, threats, physical attack, domestic violence or property damage, and includes acts of violence committed by Affordable Solar employees, customers, relatives, acquaintances or strangers against Affordable Solar employees in the workplace but does not include lawful acts of self defense or the defense of others.

Weapons are defined as any instrument of combat, or any object not designed as an instrument of combat but carried for the purpose of inflicting or threatening bodily injury. Examples include but are not limited to firearms, knives with fixed bladed or pocket knives with blades longer than four inches, razor, metal knuckles, blackjacks, hatchets, bows and arrows, nun chahkas, foils, or any explosive or incendiary device.

2. PROHIBITED CONDUCT AND SANCTIONS:

2.1 Prohibited conduct includes, but is not limited to intentionally:

- 2.1.1 Injuring another person physically;
- 2.1.2 Engaging in verbal or physical behavior that creates a reasonable fear of injury to an identifiable person;
- 2.1.3 Engaging in verbal or physical behavior that subjects an identifiable individual; to extreme emotional distress;
- 2.1.4 Engaging in threatening or violent behavior based on race, ethnicity, gender, sexual orientation, or other protected status;
- 2.1.5 Defacing or damaging property;
- 2.1.6 Threatening to injure an individual or to damage property;
- 2.1.7 Committing injurious or threatening acts related to sexual assault, stalking, dating or domestic violence or sexual harassment;
- 2.1.8 Brandishing a weapon or firearm; and
- 2.1.9 Retaliating against any individual who, in good faith, reports a violation of this policy.

2.2 Individuals who violate this policy may also be subject to arrest for trespass and/or violation of the appropriate state criminal statute.

3. DEFUSING VIOLENT BEHAVIOR:

3.1 The following are the techniques recommended to defuse violent behavior.

- 3.1.1 Use a calm, non-confrontational approach.
- 3.1.2 Ask the person how can help them.
- 3.1.3 Focus on their behavior not the person.
- 3.1.4 Maintain a safe distance from the person
- 3.1.5 Do not touch the person, argue with him/her, or make any aggressive movements.
- 3.1.6 If is safe to do so, alert other persons in the area of the workplace violence incident and evacuate them from the area.
- 3.1.7 Call 911 in situation that threatens human life and/or property, and requires immediate attention.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

4. REPORTING INCIDENTS:

4.1 Any individual who believes there is an immediate danger to the health or safety of any member of the Affordable Solar should call 911.

4.2 General questions about Affordable Solar Violence Prevention Policy should be directed to:

- 4.2.1 EH&S Department
- 4.2.2 Human Resources Department

5. INCIDENT INVESTIGATION AND DOCUMENTATION

5.1 Every incident at allegation shall be reported to management and to the Department of Environmental Health and Safety.

5.2 All workplace violence incidents should be investigated by the first-line supervisors or appropriate management

5.3 The manager or supervisor will immediately take the appropriate actions as necessary, such as removing the person making the threats from the work area until the situation is resolved

5.4 For serious threats or acts of violence Security and the law enforcement authorities.

5.5 The supervisor or manager shall complete a Incident report and forward it to the EH&S and HR departments.

6. TRAINING:

6.1 The Workplace Violence Prevention training will be provided to all Affordable Solar employees.

6.2 Training will be provided initially to all new employees upon hire and at a minimum once annually in a form of Weekly Safety Training Program.

6.3 The training shall include the following topics:

- 6.3.1 Overview of the workplace violence prevention policy.
- 6.3.2 Recognition of the workplace violence warning signs.
- 6.3.3 Techniques for defusing violent behavior.

7. RECORD KEEPING

7.1 Workplace violence prevention Program records shall be maintained by the department of EH& S Dept.

7.2 Workplace violence incident reports shall be maintained by EH&S department,

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: ELECTRICAL SAFETY PROGRAM

POLICY 034

REFERENCE: 29 CFR 1910.331 through 1910.335

PURPOSE:
The purpose of this policy is to establish safe work practices that are intended to prevent electric shock or other injuries resulting from either direct or indirect electrical contacts.

SCOPE:
The information in this Electrical Safety Policy applies to all employees who may be exposed a release of electrical energy.

RESPONSIBILITY:
It is the responsibility of Affordable Solar to:

- Provide work sites with a copy of the Electrical Safety Policy
- Provide Electrical safety training to all new employees

It is the responsibility of the Supervisor to:

- Select PPE to protect employees
- Require employees to use selected PPE
- Inform and train employees.

DEFINITIONS:

Electric shock and burns – An electric shock occurs when electric current passes through the body. This can happen when touching an energized part. If the electric current passes across the hest or head, death can result. At high voltages, severe burns can result.

Arc-Blast Burns – An electric arc flash can occur if a conductive object gets too close to a high-amp current source or by equipment failure. The arc can heat up the air to temperatures as high as 35,000 F, and vaporize metal in the equipment. The ark flash can cause severe skin burns by direct heat exposure and by igniting clothing.

Arc-Blast Impacts – The heating of air and vaporization of metal creates a pressure wave that can damage hearing and cause memory loss (from concussion) and other injuries. Flying metal parts are also a hazard.

Falls – Electric shocks and arc blasts can cause falls, especially from ladders or unguarded scaffolding.

Energy Source – Any source of electrical energy

Exposed Electrical Parts – Energized parts that can be inadvertently touched or approached nearer than a safe distance by a person. Examples include bare wiring, frayed wiring.

Ground Fault Circuit Interrupt (GFCI) – is an electrical device which protects personnel by detecting potentially hazardous ground faults and quickly disconnecting power from the circuit. A potentially dangerous ground fault is any amount of current above the level that may deliver a dangerous shock. Any current over 8 mA is considered potentially dangerous depending on the path the current takes, the amount of time exposed to the shock, and the physical condition of the person receiving the shock.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Ground – a conducting connection, whether intentional or accidental, between an electrical circuit or equipment and the earth or to some conducting body that serves in place of the earth.

Conductors – are the wires and cables that carry electricity. Conductors are wrapped in insulators – electricity resistant materials like rubber, plastic, and glass that keep the electric current on its pass and prevent accidents

PERSONAL PROTECTIVE EQUIPMENT

Affordable Solar will provide personal protective equipment for use by employees working in areas where they could be exposed to electrical hazards. Employees are required to observe the following procedures fro PPE use:

2.1 PPE use is mandatory when contact with exposed electrical sources is likely.
2.2 Only use PPE that is designed fro the work being performed.
2.3 Inspect and test all PPE prior to use.

EMPLOYEE TRAINING

Employees not authorized to perform work on electrical equipment and components will be trained in general electrical safety precautions for the purpose of hazard awareness. The following electrical safety rules apply to unqualified employees:

a. Unqualified employees are not to conduct any electrical repairs.
b. All electrical hazards must be reported to the Site Manager immediately.
c. Equipment must not be operated there is an electrical hazard.
d. Electrical equipment must not come in contact with water.
e. Use of cords or plugs that are missing the "ground "prong is prohibited.
f. Never overload electrical receptacle.
g. Do not bend a 3-pronged plug or force it into a 2 –pronged outlet.
h. Use only wiring approved for use in outdoor or wet areas, and plug into ground fault circuit interrupters (GFCIs)
a. Do not touch anything electrical with wet hands or while in a wet area. Wear rubber gloves and rubber boots as protections.
i. Don't contact anything electrical with anything metal.
j. Use insulated, nonconductive tools around power sources.

PORTABLE ELECTRICAL EQUIPMENT AND EXTENSION CORDS.

The following requirements apply to the use of cord-and-plug-connected equipment and flexible cord sets (extension cords)

4.1 Extension cords may only be used to provide temporary power.
4.2 Portable cord-and plug connected equipment and extension cords must be visually inspected before use for external defects such as loose parts, deformed and missing pins, or damage to outer jacket or insulation, and fro possible internal damage such as pinched or crushed outer jacket.
4.3 All defective cords or cord-and –plug-connected equipment must be removed from service and no person may use it until it is repaired and tested to endure it is safe for use.
4.4 Extension cords must be three-wire type.
4.5 The use of job made extension cords is forbidden.
4.6 Flexible electric cords connected to equipment may not be used for raising or lowering the equipment.
4.7 Flexible cords may not be run through windows and doors.
4.8 Flexible cords may not be run above ceilings or inside through walls, ceilings or floors and may not be fastened with staples or otherwise hung in such a fashion as to damage the outer jacket or insulation.
4.9 Cords must be covered by a cord protector or tape when they extend into a walkway or other path of travel to avoid creating a trip hazard.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

WET OR DAMP LOCATIONS

Work in wet or damp work locations (i.e., areas surrounded or near water or other liquids) should not be performed unless it is absolutely critical. Electrical work should be postponed until the liquid can be cleaned up. The following special precautions must be incorporated while performing work in damp locations:

5.1 Electrical cords used in damp locations must have Ground Fault Circuit Interrupters (GFCIs)

5.2 Remove standing water before beginning work. **Work is prohibited in areas where there is standing water.**

5.3 Do not use electrical extension cords in wet or damp locations.

5.4 Keep electrical cords away from standing water.

MATERIAL HANDLING EQUIPMENT AND OVERHEAD POWER LINES

When work must be performed near overhead power lines, the following guidelines shall be observed.

6.1 Ensure electrical distribution and transmission lines are de-energized and visibly grounded.

6.2 If this is not possible, operated close to power lines only if the clearances in the chart below are observed.

Voltage	Minimum Clearance
50 kV or below	10 feet
Over 50 kV	10 feet + 0.4 for each 1 kV over 50 kV or twice the length of the line insulator but never les than 10 feet

6.3 When material handling equipment is in transit with no load, the clearance must be observed according to the chart below.

Voltage	Minimum Clearance
Less than 50 kV	Minimum of 4 feet
Over 50 kV up to and including 342 kV	Minimum of 10 feet
Over 345 kV up to and including 750 kV	Minimum of 16 feet

6.4 If the power line is down or falls on your vehicle and you are trapped do not step outside you vehicle. Stay in your vehicle until help arrives. If people try to help, you must tell them to stay away. Contact local power company.

STANDARD AC VOLTAGES

The standard alternating current voltages in substations and on lines and equipment are as follows:

7.1 Distribution Voltages

- 120 volts
- 120/240 volts
- 120/208 Y
- 240 volts
- 277/480 Y
- 480 volts
- 2,400/4,160 Y
- 7,200 volts

- 7,200/12,470 Y
- 13,200/23,000 Y
- 13,800/24,000 Y
- 14,400/24,540 Y
- 19,900/34,500 Y

7.2 Transmission Voltages

- 69 kV
- 115 kV
- 138 kV
- 345 kV

CLASSIFICATION OF CIRCUITS

8.1 The following circuits come within the 0-5,000 volt classification:

- 120 volt two-wire secondary
- 120/240-480 secondaries
- 240 volt three-phase three-wire power circuits
- 120/240 volt three-phase four-wire delta secondaries
- 120/208 volt three-phase four wire wye secondaries
- 277/480 volt three-phase four-wire wye secondaries
- 380 volt, 480 volt and 550 volt three-phase three-wire power circuits
- 2,400 volt and 4,160 volt primaries
- 125 volt, 250 volt, 550 volt, 600 volt and 1,200 volt D.C. circuits

8.2 . The following circuits come within the 5,000 to 15,000 volt circuit classification:

- 7,200 volt phase to phase
- 7,200 volt phase to ground
- 12,470 volt wye-connected, or
- 12,470 delta-connected circuits

METHOD OF GROUNDING LINES AND APPARATUS

9.1 All phase conductors shall be tested for voltage and grounded with approved grounding devices. However, where work is to be done on only one pole of an

H-frame line 60 kV and above, it will be permissible to test for voltage and ground with approved grounding devices only the conductors to be worked on provided the grounding devices are installed on the pole on which the work is to be done. In addition, the appropriate minimum approach distance to any un-grounded conductor must be maintained.

9.2 When applying grounding devices, the ground connections shall always be made first, then the closest phase to the employee, second closest, etc. In removing the grounding device, the reverse procedure shall be followed, first removing the connection farthest from the employee, then next farthest, with the connection closest to the employee removed last. After all the connections to the phase wires have been removed, the ground connections may be removed.

9.3 Employees shall at all times exercise care in applying grounding devices. All connecting surfaces shall be brushed (or serrated jaws used) to ensure a good connection exists during the grounding process. Employees shall stand where they will not be involved if an arc develops and where they will not be in

danger of a whipping motion of the ground lead during a fault. Keep lead slack to a minimum. (Note: Never coil a grounding device jumper. If slack must be removed either get a shorter device or gather together without coiling).

9.4 When it is necessary to ground lines above energized circuits, the following preliminary precautions shall be taken according to the voltage of the energized circuit:

9.4.1. Circuits of 5,000 volts and below shall be covered with approved insulated protective devices.
9.4.2. Circuits carrying voltages from 5,000 to 15,000 volts shall either be moved out to a safe distance with live line tools or they shall be covered with approved insulated protective devices.

9.5 The safest way to temporarily ground overhead distribution lines and devices is to create an equipotential zone (EPZ) by using personal protective grounds. The EPZ method of grounding is the installation of temporary grounds installed from the system neutral or alternate ground source, to a grounding cluster bracket on the structure or pole below the worker's feet, to a phase conductor, and from phase conductor to phase conductor creating a zone of equal potential between the worker and anything within reach. However, there will be situations where this is impossible or creates a greater hazard. In these situations, personal protective grounds shall be installed on both sides and as close to the work site as possible. In these situations rubber gloves shall be used by workers.

9.6 Verify that existing pole grounds are connected to the neutral and/or shield wire. Visually inspect for broken, loose, or bad connections and repair when necessary.

GROUND WIRES AND GROUNDING NEUTRALS

10.1 Rural Line on Transmission and Shields Type Construction

Where the overhead shield wire on transmission and shielded type distribution circuits are used for the neutral on unshielded distribution circuits, taps shall not be made to the pole ground wire, but shall be tied separately to the shield wire or neutral. Stranded wire shall be used in making the connection to shield wires.

10.2 Overhead and URD Ground Wire or Neutral Wires

Employees shall avoid cutting the overhead and URD ground wire or neutral wires of any kind, or opening joints in them without first bridging the section to be opened with wire of suitable size, as this could cause the ground wire or neutral to become energized at full line potential.

10.3 Pole Grounds on Line

Employees shall not open the ground wire on poles without bridging the section to be opened.

10.4 Substation Grounds and Transformer Neutrals

When work is to be done on ground wires in substations, employees shall avoid cutting or opening joints in the wires of the grounding system without first bridging the section to be opened with a grounding clamp or with wire of suitable size. If it becomes necessary to open the ground bus leading to the neutral of a wye-connected power transformer bank, particular care shall be taken to bridge the section to be opened with wire or cable of capacity equal to that of the ground bus.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

GROUND TESTING

11.1 In testing secondary and lightning arrester grounds on circuits carrying from 0 to 5,000 volts, where the ground is left tied to the arrester while the test is being made, the tester shall use insulated test clips and wear rubber gloves to protect from shock or burns due to a defective ground or lightning arrester.

11.2 In making tests as above on circuits carrying 5,000 volts and above, the tester shall use rubber gloves on grid grounds. When testing isolated grounds, approved hot-sticks shall be used to make initial connection, and then if a difference of potential is not detected, rubber gloves may be used to make permanent connections for the test.

TESTING DELTA CONNECTED SYSTEMS FOR GROUNDS

Delta connected primaries shall be tested for accidental grounds once every six months under the supervision of the line supervisor of the area grounds shall be located and removed as soon as possible.

LIVE LINE MAINTENANCE RULES:

Approved live line tools shall be used when it is necessary to work on energized lines carrying more than 5,000 volts or with the use of an aerial basket truck as outlined in rules regarding Aerial Basket Devices.

12.1 All live line tools, including fuse sticks, shotguns and “extendo” sticks shall be cleaned, inspected and dielectrically tested every two years. Any stick failing the visual or dielectric test shall be either immediately repaired or retested, or discarded.

The nature of live line maintenance work is such that it would be difficult to govern it by hard and fast rules; therefore, the supervisor shall use their ingenuity to devise safe methods on the points not covered by live line rules. The entire responsibility of the safety of employees engaged in live line work, as well as the enforcement of the following rules, rests with the supervisor.

12.2 Before live line work is started, a briefing shall be held setting forth the plan of operation and specifying the type of tools and equipment to be used.

- 12.2.1 The supervisor shall make a thorough inspection of poles, structures, or towers adjacent to work locations making sure that the condition of tie wires, pins, and hardware are intact.
- 12.2.2 The supervisor shall determine that adequate clearance exists between the conductor and any object.
- 12.2.3 If the work to be done is on an angle, the supervisor shall arrange to take care of strains. In addition, the supervisor shall arrange for blocks to be used on the ends of the link stick ropes so the conductor can be moved slowly and carefully.
- 12.2.4 Link sticks shall be tied off to suitable anchors on all regular live line setups. In no case shall they be tied to a car or truck unless the motor is stopped, the ignition key removed, and the brakes set. The supervisor shall keep the key in their pocket until all lines are removed from the vehicle.

12.3 The supervisor and employees shall inspect all tools before beginning work. Each tool shall be wiped clean and visually inspected for defects before use each day. No defective tools or equipment shall be used.

- 12.3.1 Any tool found to have a defect that would affect the insulating qualities or mechanical integrity of the tool shall be immediately removed from service and sent to the manufacturer for repairs. Before putting back into service the stick shall be cleaned, inspected and dielectrically tested. If repairs cannot be made, the tool shall be

discarded immediately.
Tools shall be kept clean and dry. All live line tools shall be of fiberglass construction and have the manufacturer's certification and a current inspection and test date visible and shall be able to withstand the following minimum test: 100,000 volts per foot of length for 5 minutes.

12.3.4 All live line tools shall be of fiberglass construction and have the manufacturer's certification and a current inspection and test date visible and shall be able to withstand the following minimum test: 100,000 volts per foot of length for 5 minutes.

12.4 Employees shall not depend on warnings from the feel of current, which may creep over the tools. All live line tools shall be equipped with safe distance markers to indicate how far out on the sticks they can safely hold them. The marker shall be located from the conductor end of the sticks as follows:

- Up to 66 kV 4 feet
- 66 to 115 kV 5 feet
- 115 to 138 kV 6 feet
- 138 to 345 kV 8 feet

Link sticks shall be at least 4 feet long for 66 kV and below, 6 feet for 66 kV to 138 kV and 9 feet for 138 to 345 kV. Employees shall not reach beyond these markers when engaged in live line work.

12.5 The supervisor shall not do any work, but shall watch the employees closely, and advise them as necessary.

12.6 Safe working distances from all energized wires, as set forth in Rule-518 shall be maintained by employees at all times. In congested locations where this is impossible, a clearance shall be obtained.

12.7 The supervisor shall plan the work carefully, and if in doubt, the supervisor shall not proceed until the work can be done safely.

12.8 Close cooperation shall be obtained from every worker on the job. No high tempered or fractious worker shall ever be assigned to „live line“ work.

12.9 Haste inconsistent with safety shall not be permitted.

12.10 Unnecessary conversation shall not be allowed, as this would distract attention, cause confusion and create a hazard.

12.11 In untying and tying conductors on pin type insulators, one worker shall work at a time and the other shall steady the conductor with approved hold sticks.

12.12 In untying conductors, the workers shall cut the tie wires off short or roll them up in a ball so they will not contact pins, cross arms, poles, ground wires or other conductors.

12.13 Every precaution shall be used in moving about on a pole. No employee shall change position without advising the other of his/her intentions.

12.147 In removing link stick lines („fuzz lines“) from energized conductors, the employee shall take hold of the link stick rope and pull the link stick to the employee before taking hold of the stick.

12.15 The supervisor shall be positive that an emergency exists before beginning live line work in wet weather, and then extraordinary care shall be used to prevent ropes from swinging against conductors.

12.16 Live line maintenance work shall not be done at night unless absolutely necessary.

12.17 Employees shall not allow a rope to lie across energized conductors.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

STRINGING AND SALVAGING WIRE

13.1 Prior to stringing or removing de-energized conductors, a tailboard conference shall be held setting forth the plan of operation and specifying the type of equipment to be used, grounding devices and procedures to be followed, crossover methods to be employed, and clearance authorization, if needed.

13.1.1. Where there is a possibility of the conductor accidentally contacting an energized circuit or receiving an induced voltage buildup, the conductor being installed or removed shall be grounded.

13.1.2. If crossing another line, the existing line shall both be de-energized and grounded on both sides of the crossover, or the line being strung or removed shall be considered and worked as energized. When crossing over energized conductors in excess of 600 volts, rope nets or guard structures shall be installed, unless provisions are made to isolate or insulate the employees or the energized conductor. Where practical, the automatic reclosing feature of the circuit-interrupting device shall be made inoperative. In addition, the line being strung shall be grounded on either side of the crossover and worked as energized.

13.1.3. Conductors being strung or removed shall be kept under positive control by the use of adequate tension reels, guard structures, tie lines, or other means to prevent accidental contact with energized circuits.

13.2.4. Guard structures shall be of adequate dimension and strength to prevent accidental contact with energized conductors.

13.2.5. Catch-off anchors, rigging, and hoists shall be of ample capacity to prevent loss of lines.

a) The manufacturer's load rating shall not be exceeded for stringing lines, pulling lines, sock connections, and all load bearing hardware and accessories.
b) Pulling lines and accessories shall be inspected regularly and replaced or repaired when damaged or when dependability is questionable.
c) 'Quick Sleeve' type splices shall not be relied upon when pulling conductors in or out.

13.2.6. Conductor grips shall not be used on wire rope unless designed for this application.

13.2.7. While the conductor or pulling line is being pulled (in motion) employees shall not be permitted directly under overhead operations, nor shall any employee be permitted on the cross arm.

13.2.8. A transmission clipping crew shall have a minimum of two structures clipped in between the crew and conductor being sagged. When working on bare conductors, clipping and tying crews shall follow approved grounding procedures in Rule-530. The grounds shall remain intact until the conductors are clipped in, except on deadend structures.

13.2.9. When adverse weather occurs, work from structures shall be discontinued, except when making emergency repairs. Stringing and clipping operations shall be discontinued during the progress of an electrical storm in the immediate vicinity. (See Rule 105-E)

13.2.10. Reel handling equipment, including pulling and braking machines, shall have ample capacity, operate smoothly, and be leveled and aligned in accordance with the manufacturer's operating instructions.

a. Reliable communications between the reel tender and pulling rig operator shall be provided.
b. Each pull shall be snubbed or dead-ended at both ends and grounded before subsequent pulls.

13.2.11. During in-pulling or wire removal, the pulling shall be slow and steady to prevent swinging. The wire shall be watched carefully to prevent it from hanging on tree limbs, weeds and other obstructions.

13.2.12. No employee shall be permitted to touch or attempt to handle any conductor or wire on the pole or ground without rubber gloves.

13.2.13. Pay-out reels.

a. Adequate braking shall be used with all pay-out reels. Employees shall not touch or attempt to stop the revolving reel except with the brake.
b. The inside end of the coil of wire, where this end is accessible, shall be securely fastened to the reel to prevent the wire from getting loose when all the wire has been paid out.
c. If the inside end of the coil cannot be secured, a tail rope shall be fastened securely to the wire before the end is reached to prevent it from getting loose.

13.3 Stringing Wire Over or Near Energized Apparatus or Conductors and Crossing Highways.

13.3.1. Before stringing operations are begun, a tailboard conference will be held pointing out all hazards and equipment and material needed to safely perform the job.

13.3.2. When stringing adjacent to energized lines or apparatus, the tension stringing method or other methods, which preclude unintentional contact between the lines being pulled, and any employee, shall be used.

13.3.3. All pulling and tension equipment shall be isolated, insulated, or effectively grounded.

13.3.4. A ground shall be installed between the tensioning reel setup and the first structure in order to ground each bare conductor, sub-conductor and overhead ground conductor during stringing operations.

13.3.5. During stringing operations, each bare conductor, sub-conductor and overhead ground conductor shall be grounded at the first structure adjacent to both the tensioning and pulling setup and in increments so that no point is more than 2 miles from a ground.

a. The grounds shall be left in place until the conductor installation is completed (tied or clipped in).
b. Such grounds shall be removed as the last phase of aerial cleanup.
c. Except for moving type grounds, the grounds shall be placed and removed with a hot-stick.

13.3.6. Conductors, sub-conductors and overhead ground conductors shall be grounded at all deadend or catch-off points.

13.3.7. All conductors, sub-conductors and overhead ground conductors shall be bonded to the tower at any isolated tower where work is being performed.

a. Work on deadend towers shall require grounding on all de-energized lines.
b. Grounds may be removed as soon as the work is completed, provided that the line is not left open-circuited at the isolated tower at which work is being completed.

13.3.8. When performing work from the structures, clipping crews and all others working on conductors, sub-conductors or overhead ground conductors shall be protected by individual grounds installed at each work location.

13.3.9. When it becomes necessary to splice conductors at ground level, a ground shall be located at each side and within 10 feet of the working area. The two ends to be spliced shall be bonded to each other.

13.3.10. All employees engaged in stringing or removing wire over or around energized lines or apparatus shall wear rubber gloves at all times.

13.3.11. When conditions prevent the above grounding procedures, conductor equipment shall be considered energized and worked as such.

a. Trucks, pulling reels and tension setups shall be insulated or barricaded.
b. The reel attendant shall stand on an insulated stool, mat or blanket and wear rubber gloves.

13.3.12. Guard structures or other suitable means shall be provided where crossing energized lines, highways or streets.

a. Adequate warning signs and flaggers shall be provided at all highway, road and street crossings.
b. Where possible, a pull rope of sufficient strength and length shall be used to pull in conductors.

13.4. Removing or Salvaging Wires

The general precautions for stringing wires apply equally to the removing of wires. However, where at all practicable, the wire to be removed shall be pulled out and laid flat on the ground, with a trail rope attached, before any attempt is made to reel it up on a take-up reel or coil it by hand, except where power driven take-up reels are used. If the latter method is used, a trail rope shall be attached to the trailing end of the conductor.

13.5 Definitions

13.5.1. Sub-conductor means any one conductor of a group of bundled conductors.
13.5.2. Each work location means each pole, structure or tower.

RUNNING AND REPAIRING SERVICES

14.1 Employees shall wear rubber gloves when connecting, disconnecting or repairing energized services.

14.2 Service wires shall be permanently attached to the customer's building before they are attached to the pole. It is permissible to transfer an energized service from a construction loop to a building, provided the ends of the conductors are properly taped and a set of blocks or a fiber hoist can be attached to a safe support for removing and pulling the service. Services may be pulled while standing on a ladder provided the ladder is securely tied and the employee is wearing fall protection. Two employees shall do the work when unusual or hazardous conditions exist.

14.3 Employees shall be particularly careful in stringing services to avoid any undue hazard associated with the close proximity to primaries, and to avoid locations for the service where the service wires might fall across conductors of a higher voltage.

14.4 Service wires shall never be installed on transformer poles unless a minimum separation of fifteen (15) inches can be maintained between the service wires and the energized primary conductors or cutout.

14.5 Two employees shall be used in stringing services from a transformer pole where the primary jumpers extend below the secondary wires.

14.6 When the employee is making connections to secondary buses, the neutral wire shall be connected first and the connection to the energized wires last. The procedure shall be reversed when disconnecting services.

14.7 Prior to any service being connected to a new or replaced transformer, the voltages and ratings of that transformer shall be thoroughly checked by the technician. First, the technician shall verify the service requirements. Second, the technician shall check the nameplates and labels on the transformer to ensure that the correct transformer has been installed. Third, the technician shall energize the transformer and check the secondary voltage for accuracy before attaching the transformer to the local services.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

PHASING OR TYING CIRCUITS TOGETHER:

15.1 When work is undertaken that requires the replacement of any air switch either overhead or underground, or moving underground cable placement that might change the original phasing, no switch shall be operated until phasing has been checked with an approved phase meter. Additionally, phasing shall be checked before the replacement of any switch is complete even if the switch does not require any operation to complete the installation, i.e. if the switch is a normally open switch.

15.2 Before tying circuits fed from two different sources together, contact the dispatcher for instructions.

15.3 When phasing and tying circuits together, reclosing devices controlling circuits shall be placed in the disabled position.

HANDLING HIGH VOLTAGE TEST EQUIPMENT:

16.1 When it is necessary to test transformers and other equipment for short circuits, open circuits and grounds, and a step-up transformer is used, the following procedures shall be followed:

16.1.1. The fuses in the low voltage circuit of the step-up transformer shall not be larger than ten amperes rating unless large equipment is being tested. The circuit shall be controlled with a double pole switch so that both wires feeding to the step-up transformer will be killed when the switch is open. The high voltage leads from the test transformer to the apparatus being tested shall be kept insulated from the surface on which the test employees are standing. The high voltage wire which has to be handled during the test shall be attached to the end of at least a six (6) foot live line pole, and the employees handling the pole shall hold it near the opposite end.

16.1.2. Employees are positively prohibited from handling energized high voltage with their hands. (See Rule-518) The step-up transformer circuit shall be de-energized and grounded each time it is necessary to handle the wires to make connections incidental to the test, except where the wire is attached to the insulated stick.

SERVICING AND MAINTAINING STORAGE BATTERIES:

17.1 Face shields, aprons, and rubber gloves shall be worn by employees handling acids or batteries.

17.2 Smoking, lighted blowtorches, etc., shall not be permitted around batteries. The battery room shall be well ventilated at all times.

17.3 Cleaning batteries or terminals with brushes or other devices, which may short out the cell, shall not be permitted. (Glass jars have exploded from ignition of hydrogen-oxygen mixture in a cell by a spark from a short on the terminals).

17.4 When doing work on batteries where contact with the electrolyte is made, a container with baking soda and water shall be provided to neutralize the electrolyte on the hands and tools.

17.5 For further information on servicing and maintaining storage batteries, see the manufacturers‟ instructions.

CONTINUITY TEST

Continuity testers shall be used only on de-energized services to identify unintentional grounds or short circuits and to identify the neutral conductor.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: FALL PROTECTION PROGRAM

PO0LICY 035

REFERENCE: 1910 Subpart D – Walking and working Surfaces:
Walking-Working Surfaces, 29 CFR 1910.22
Guarding Floor and Wall Openings and Holes, 29 CFR 1910.23
Portable Wood Ladders, 29 CFR 1910.25
Portable Metal Ladders, 29 CFR 1910.25
Fixed Ladders, 29 CFR 1910.27
1910 Subpart F – Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms: Powered Platforms for building maintenance, 29 CFR 1910.66
Vehicle-mounted elevated and rotating work platforms, 29 CFR 1910.67
1910 Subpart I – Personal Protective Equipment.

PURPOSE:
The purpose of the Fall Protection Guideline is to ensure the safety and well being of persons working on and/or for the Affordable Solar , full time, part time, temporary employees, regardless of the type of work.

SCOPE:
This program covers the maintenance, repair, replacement, alteration, demolition, and new construction. The Fall Protection program shall be incorporated into all work activity involving employees of Affordable Solar when working at a level 6 feet or more above lower level. Fall Protection Safeguards shall be incorporated into any work situation where the height of a lower level is 6 feet or more. Fall protection shall be required on or around dangerous equipment, elevated platforms, excavations, hoist areas, open holes or access, leading edge work, pits, ramps and runways, roof scaffolding, skylights, stacks, staging tanks, unprotected sides and edges, wells, and other applicable locations.

RESPONSIBILITY:

It is the responsibility of Affordable Solar to:
- Provide develop and maintain the Fall Protection Program.
- Verify that training has been provided to each employee who is required to work at a level of 6 feet or more above lower level.

It is the responsibility of Supervisor to:
- Train employees on specific procedures of Fall Protection Program.
- Make sure that all Fall Protection Program Procedures are followed
- Make sure that only trained employees are assigned to work that requires use of fall protection equipment

It is the responsibility of the employees to:
- Follow all procedures outlined in this policy.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Table of Contents:

1 **DEFINITIONS**:

Work Area: the portion of a walking/working surface where job duties are being performed.
Unprotected Sides and Edges: any side or edge (except entrances to points of access) of a walking/working surface (e.g. floor, roof, ramp, or runway) where there is no wall or guardrail system at least 39 inches (1.0 m) high.
Walking/Working Surface: any surface, whether horizontal or vertical, on which an employee walks or works, including, but not limited to floors, roofs, ramps, bridges, runways, formwork and concrete reinforcing steel, but excluding ladders, vehicles, or trailers on which employees must be located in order to perform their duties.
Ramps, Runways, and other Walkways – every employee on a ramp, runway or walkway $\geq$ 6' above a lower level shall be protected from falling by a guardrail system with appropriate mid and top rails, as well as toe boards.
Toeboard – A vertical barrier erected along exposed edges of a floor opening, wall opening, platform, runway, or ramp to prevent falls of materials.
Standard Railing – A vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.
Stairs, Stairways – A series of steps leading from one level or floor to another, or leading to platforms, pits, crossovers. A series of steps and landings having three or more risers constitutes stairs or stairways.
Ladders – A ladder is an appliance usually consisting of two side rails joined at regular intervals by cross-pieces called steps, runs, or cleats, on which a person may step in ascending or descending.
Platform – An extended step or landing breaking a continuous run of stairs.
PPE – Personal Protective Equipment

2 **GENERAL REQUIRMENTS:**

2.1 Housekeeping applies to all permanent Affordable Solar worksites.
- 2.1.1 All floors shall be maintained in a clean and dry condition.
- 2.1.2 All floor surfaces and passage ways must be maintained free from protruding nails, splinters, holes or loose floorboards.

2.2 Aisles and passageways
- 2.2.1 Sufficient safe clearance shall be allowed for aisles, at loading docks, through doorways and wherever turns or passage must be made by material handling equipment.
- 2.2.2 Aisles and passageways must be kept clear and good repairs, with no abstraction across or in aisles that could create a hazard.

3 GUARDING FLOOR AND WALL OPENINGS AND HOLES:

3.1 Protection for floor openings.
- 3.1.1 Every stairway, ladder way, hatchway and chute floor opening, and other types of floor openings, should be protected by standard railings on exposed sides.
- 3.1.2 Every manhole floor opening should be guarded by a cover, attendant, or by removable standard railings.
- 3.1.3 Open-sided floors, runways, platforms, wall openings and holes with grater than a 4 foot drop should be guarded. A toe board should be used if beneath

the open sides, passing persons, or if there is a risk of falling materials.

4 ELEVATED SURFACES:

4.1 OSHA's directive on Fall Protection in General Industry defines a platform as any elevated surface designed or used primarily as a walking or working surface upon which employees are required or allowed to walk or work while performing assigned tasks on a predictable and regular basis (work performed once every two weeks or for a minimum of 4 man-hours during any 4 weeks period).

4.2 In situations where workers are exposed to falls form an elevated surface other than a 'predictable and regular basis' PPE is required 29 CFR 1910.132

5 PORTABLE AND FIXED LADDERS:

5.1 Portable ladders.

5.1.1 All ladders must be maintained in usable and safe conditions at all times.

5.1.2 Ladders must be inspected regularly, depending on use and exposure frequency.

5.1.3 All damaged portable ladders must be taken out of service and marked as defective until repaired.

5.2 Fixed ladders

5.2.1 Fixed ladders more than 20 feet high be equipped with fall protection devices (cages, wells or ladder safety devices).

5.2.2 When ladders are used to climb to heights exceeding 20 feet, landing platforms should also be provided for each 30 feet of height or fraction thereof, except when no other fall protection devices are provided, platforms shall be provided for each 20 feet of height or fraction thereof.

5.2.3 To provide safe access to the ladder, all landing platforms should be equipped with standard railings and toe board and should not be less than 24 inches in width and 30 inches in length.

6 AERIAL DEVICES AND LIFTS

6.1 The aerial devices or lifts which elevate workers to jobsites above ground using a platform must comply with the following guidelines.

6.1.1 Only trained persons are authorized to operate an aerial lift.

6.1.2 Employees must stand firmly on the floor of the basket, and shall not sit or climb on the edge of the basket or use planks, ladders, or other devices for a work position.

6.1.3 A body belt or harness shall be worn and lanyard attached to the boom or basket when working from an aerial lift.

7 FALL PROTECTION EQUIPMENT

7.1 All worksites shall be evaluated to determine fall protection hazards.

7.2 Job hazard evaluation shall be documented in writing and updated whenever conditions change, or when new procedure or new equipment is introduced to the worksite.

7.3 When other means of fall protection cannot be used PPE is required.

7.4 If needed the Affordable Solar must provide employees with PPE that properly fits each affected employee.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

8 TRAINING

8.1 Each Affordable Solar employee who may be exposed to fall hazards will be trained to recognize the hazards and the procedures to follow to minimize the hazards. The Manager or designee will provide the training. Training must include the following:

- 8.1.1 Identification of fall hazards in the work area.
- 8.1.2 Proper procedures for erecting, maintaining, disabling and inspecting the fall protection systems used at the worksite.
- 8.1.3 Instructions on proper use and operations of the fall protection systems used at worksite.
- 8.1.4 Types of rescue procedures to follow in case of a fall.
- 8.1.5 Overview of OSHA fall protection standard.

8.2 A training record will be maintained for each employee. The record will contain the name of the employee trained, date of training and the signatures of the person who conducted the training and the employee being trained.

8.3 Retraining shall be performed is there is a change in the fall protection system being used or if an employee's actions demonstrate that the employee has not retained the understanding or skills important to fall protection.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: FALL PROTECTION PROGRAM ADDENDUM

POLICY 035A

PURPOSE

This is a statement of official **Affordable Solar** policy to establish a means to analyze elevated work tasks and determine appropriate personal protection against falls in accordance with Occupational Safety and Health Administration (OSHA) regulations:

"Fall Protection," 29 CFR 1926 Subpart M

"Walking and Working Surfaces," 29 CFR 1910 Subpart D

"Powered Platforms, Man lifts, and Vehicle-Mounted Platforms," 29 CFR 1910 Subpart F

"Scaffolds," 29 CFR 1926 Subpart L

"Telecommunications," 29 CFR 1910.268 Subpart R

SCOPE

The Affordable Solar fall Protection Program shall apply to all employees who are exposed to unprotected sides or edges of surfaces that present a falling hazard of four feet or more to a lower level. Employees will not be required, nor allowed to perform any duties which require the employee to get closer than six feet to an unprotected edge, platform, and walkway of any building or utilize elevated equipment unless the employee is properly secured from falling.

Exceptions to this requirement include the working sides of loading docks and exposed perimeters of entertainment stages. Employees may use portable ladders without fall protection equipment up to sixty feet. Employees may work on scaffolds and aerial lifts up to 6 feet in height and on the edge of an excavation up to 6 feet in depth without fall protection.

Additionally, the Fall Protection Program shall apply to all employees in order to minimize slips, trips and falls on the same elevation. All employees shall control fall hazards in their work area by maintaining good housekeeping and shall report conditions that may lead to slips, trips and falls to the appropriate facilities maintenance unit.

Contractors for Affordable Solar are required to comply with all applicable OSHA regulations and shall have their own fall protection program.

Definitions

Aerial lift device: means equipment such as powered platforms, vehicle-mounted elevated and rotating work platforms, extensible boom platforms, aerial ladders, articulating boom platforms, vertical towers and powered industrial truck platforms.

Anchor point: A secure point of attachment for lifelines, lanyards or deceleration (grabbing) devices.

Body belt: A strap with means both for securing it about the waist and for attaching it to a lanyard, lifeline, or deceleration (grabbing) device. **Body belts are prohibited at AFFORDABLE**

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

SOLAR

Body harness (also referred as Full-body harness): An interconnected set of straps that may be secured about a person in a manner that distributes the fall arrest forces over at least the thighs, pelvis, waist, chest, and shoulders with a means for attaching the harness to other components of a personal fall arrest system.

Connector: A device that is used to connect parts of a personal fall arrest system together (i.e. D-rings, and snaphooks).

Competent person: A person who is capable of recognizing existing and predictable hazards and has the authority to take corrective action. A Competent person also means a person who is capable of identifying hazardous or dangerous conditions in the personal fall arrest system or any component thereof as well as in their application and use with related equipment. To be considered a competent person, an 8-hour training class must be completed for general fall protection and an additional 4-hour training class must be completed for scaffolds. To be considered a competent person for equipment inspections, the manufacturer's training guidelines shall be followed.

Deceleration device: Any mechanism, such as a rope, grabbing device, ripstitch lanyard, specially woven lanyard or automatic self-retracting lifeline/lanyard, which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limits the energy imposed on an employee during fall arrest.

Deceleration distance: The additional vertical distance a falling person travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which a deceleration device begins to operate.

Designated area: a space which has a perimeter barrier erected to warn employees when they approach an unprotected side or edge, and serves also to designate an area where work may be performed without additional fall protection.

Fixed ladder: means a ladder, including an individual rung ladder, which is permanently attached to a structure, building, or equipment. It does not include ship's stairs or manhole steps.

Guard rail: A barrier erected to prevent personnel from falling to lower levels.

Hole: A void or gap 2 inches or more in its least dimension in a floor, roof, or other walking/working surface.

Horizontal lifeline: a flexible line between two horizontal fixed anchorages to which a fall arrest device is connected.

Infeasible: means that it is impossible to perform the construction work using a conventional fall protection system (i.e., guardrail system, safety net system, or personal fall arrest system) or that it is technologically impossible to use any one of these systems to provide fall protection.

Ladder: a device typically used to gain access to a different elevation consisting of two or more structural members crossed by rungs, steps, or cleats.

Lanyard: A flexible line of rope or strap that generally has a connector at each end for connecting the body harness to a deceleration device, lifeline or anchor point.

Lower levels: Those areas or surfaces to which and employee can fall. Such areas include, but are not limited to, ground levels, floors, platforms, ramps, runways, excavations, pits tanks, material, water, equipment, structures, or portions thereof.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Low-slope roof: means a roof having a slope less than or equal to 4 in 12 (vertical to horizontal).

Mechanical equipment: means all motor or human propelled wheeled equipment used for roofing work, except wheelbarrows and mopcarts.

Opening: A gap or void 30 inches or more high and 18 inches or more wide in a wall or partition, through which personnel can fall to a lower level.

Positioning device system: is a body harness system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free while leaning.

Personal fall arrest system: means a system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, body harness and may include a lanyard, deceleration device, lifeline, or suitable combinations of these.

Qualified Climber: a person who by virtue of physical capabilities, training, work experience and job assignment who is authorized by the employer to routinely climb fixed ladders and step bolts on structures such as towers and poles that do not have ladder protection devices such as cages and rest platforms.

Qualified person: one with a recognized degree or professional certificate and extensive knowledge and experience in the subject field who is capable of design, analysis, evaluation and specifications in the subject work, project or product.

Restraint line: a device which is attached between the employee and an anchorage to prevent the employee from walking or falling off an elevated surface.

Roof: means the exterior surface on the top of a building.

Roofing work: means the hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

Rope grab (grabbing device): A deceleration device that travels on a lifeline and automatically, by friction, engages the lifeline and locks to arrest a fall.

Scaffold: means any temporary elevated or suspended platform, at its supporting structures, used for supporting employees or materials or both.

Self-retracting lifeline/lanyard: A deceleration device containing a drum-wound line which can be slowly extracted from, or retracted onto, the drum under minimal tension during normal movement and which, after onset of a fall, automatically locks the drum and arrests the fall(usually within two feet or less).

Standard railing: A vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.

Steep roof: means a roof having a slope greater than 4 in 12 (vertical to horizontal).

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Snap hook: A connector consisting of a hook-shaped member with a normally closed keeper, or similar arrangement, which may be opened to permit the hook to receive an object and, when released automatically closes to retain the object. **Only locking snap hooks are permitted at Affordable Solar** .

Toeboard: A low protective barrier that prevents material and equipment from falling to lower levels and which protects personnel from falling.

Tie-Off: A procedure of connecting directly or indirectly to an anchorage point.

Unprotected sides and edges: means any side or edge (except at entrances to points of access) of a walking/working surface, e.g., floor, roof, ramp, or runway where there is no wall or guardrail system at least 39 inches (1.0 m) high.

Vertical Lifeline: A component consisting of a flexible line for connection to an anchor point at one end to hang vertically and that serves as a means for connecting other components of a personal fall arrest system to the anchor point.

Walking/working surface: means any surface, whether horizontal or vertical on which an employee walks or works, including, but not limited to, floors, roofs, ramps, bridges, runways, form work and concrete reinforcing steel but not including ladders, vehicles, or trailers, on which employees must be located in order to perform their job duties.

Work area: means that portion of a walking/working surface where job duties are being performed.

1. Policy

1.1. Affordable Solar is dedicated to providing safe work facilities for students, employees, and visitors, and complying with federal and state occupational health and safety standards. Administrators, faculty, staff and students all share a responsibility to reduce the hazards associated with falls.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

1.2. Fall hazards must first be controlled through engineering controls if feasible. When engineering controls are not feasible, then personal fall arrest systems, administrative controls and training must be instituted.

2. Duties and Responsibilities

2.1. Management

2.1.1. Designate and empower individuals who will act as competent and/or qualified persons who will be responsible for the preparation and implementation of the Fall Protection Program (See Appendix for Specific Duties of Competent Persons and Duties of Qualified Persons);
2.1.2. Ensure that employees who will act as competent and/or qualified persons are adequately trained and/or qualified;
2.1.3. Provide administrative and financial support for this program within individual departments; and
2.1.4. Ensure the Fall Protection Program is implemented and maintained within the department.

2.2. Designated Competent Persons

2.2.1. Implement all aspects of the program for work areas under their control; Receive training for "competent person" as defined by OSHA for fall protection;
2.2.2. Act as the "competent person" for job sites under their control that contain fall hazards;
2.2.3. Evaluate fall hazards in work areas under their control; and
2.2.4. Ensure that employees are informed, trained, and provided with the appropriate fall protection systems and equipment to be protected from potential fall hazards associated with job tasks.

2.3. Designated Qualified Persons

2.3.1. Maintain professional certification or other requirements in their subject field;
2.3.2. Provide design, analysis, evaluation and specification in their subject field;
2.3.3. Maintain records of their designs, analyses, evaluations, and specifications according to the requirements of the Fall Protection Program.

2.4. Supervisors

2.4.1. Ensure that employees are informed, trained, and provided with the appropriate fall protection systems and equipment to be protected from potential fall hazards associated with job tasks; and
2.4.2. Coordinate the correction of fall hazards brought to their attention by employees; and
2.4.3. Complete a "First Report of Injury" report and produce any additional documentation needed to investigate and work related injuries and illnesses.

2.5. Employees

2.5.1. Comply with the Fall Protection Program and any further safety recommendation provided by the supervisor and/or EH&S regarding fall protection;
2.5.2. Complete fall protection training requirements and request further instruction if unclear;
2.5.3. Conduct assigned tasks in a safe manner and wear all assigned personal protection

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

equipment; and

2.5.4. Report any unsafe or unhealthy work conditions and job related injuries or illnesses to the supervisor immediately.

3. Environmental Health Safety Department (EH&S)

3.1. Provide technical information and assist departments in implementing an effective fall protection program;
3.2. Provide technical information and assist Facilities Management Architecture, Engineering, and Construction in designing controls for fall protection into projects;
3.3. Provide and/or coordinate fall protection instruction as needed;
3.4. Investigate and document all reported accidents that are related to fall hazards, recommending corrective actions; and
3.5. Review and revise the Fall Protection Program, as needed for compliance with applicable regulations.

4. Information and Training

4.1. Affordable Solar employees who work on Ladders:

4.1.1. All Affordable Solar Employees who use ladders with a working height of six feet or more shall be knowledgeable of the following:

4.1.1.1. How to inspect ladders for visible defects; and
4.1.1.2. How to use ladders properly.

4.2. Affordable Solar employees who use Fall Protection Personal Protective Equipment to control fall hazards in their work area:

4.2.1. The application limits of the equipment:
4.2.2. The proper hook-up, anchoring and tie-off techniques including determination of elongation and deceleration distance;
4.2.3. Methods of use; and
4.2.4. Inspection and storage of equipment.

4.3. Affordable Solar employees who use Aerial Lifts: Employees should be knowledgeable of the following:

4.3.1. The manufacturer's operating instructions;
4.3.2. Pre-start inspection of the lift;
4.3.3. Inspection of the work area for dangerous conditions such as uneven surfaces, overhead obstructions such as power lines, and severe weather;
4.3.4. Load capacities of the equipment;
4.3.5. How to safely move the equipment;
4.3.6. How to prevent falls and use appropriate fall protection personal protective equipment; and
4.3.7. Minimum safe approach distances to energized power lines.

4.4. Affordable Solar employees who work on Scaffolds: Specific training is required in the following:

4.4.1. The nature of any electrical hazards, fall hazards and falling object hazards in the work

area;

4.4.2. The correct procedures for dealing with electrical hazards and for erecting, maintaining, and dissembling the fall protection systems and falling object protection systems being used;

4.4.3. The proper use of the scaffold, and the proper handling of materials on the scaffold; and

4.4.4. The maximum intended load and the load carrying capacities of the scaffolds.

4.5. Affordable Solar employees Assigned as Fall Protection Competent Persons:

4.5.1. Supervisors who act as the competent person for a work area or job site shall be trained and certified through a qualified fall protection training program (8 hours) to be qualified and knowledgeable of the following:

4.5.1.1. The nature of falls in the work area;

4.5.1.2. The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems used;

4.5.1.3. The use and operation of guardrail systems, personal fall arrest systems, safety net systems, warning line systems, safety monitoring systems, controlled access zones, and other protection to be used;

4.5.1.4. The role of each employee in the safety monitoring system when this system is used;

4.5.1.5. The limitations on the use of mechanical equipment during the performance of roofing work on low sloped roofs;

4.5.1.6. The correct procedures for the handling and storage of equipment and material, and the erection of overhead protection;

4.5.1.7. The role of employees in fall protection plans; and

4.5.1.8. The appropriate OSHA standards.

4.6. Company name Employees Assigned as Scaffold Competent Persons:

4.6.1. Supervisors who act as the competent person in the use of scaffolding shall be additionally trained and certified through a scaffold competent person training program (4 hours) to be qualified and knowledgeable of the following:

4.6.1.1. The proper selection of scaffold for the task based upon the type of work to be conducted and the working load to be supported;

4.6.1.2. The correct procedures for the erection of scaffolds;

4.6.1.3. The correct procedures for the dismantling of scaffolds;

4.6.1.4. The correct procedures for the moving of scaffolds;

4.6.1.5. The correct procedures for the altering of scaffolds; and

4.6.1.6. The OSHA standards.

4.7. Company name Employees Assigned as Qualified Climbers:

4.7.1. Employees who routinely climb fixed ladders, step bolts or similar climbing devices on towers and poles where ladder safety devices are not provided shall meet the following requirements:

4.7.1.1. Shall be physically capable;

4.7.1.2. Shall have successfully completed a training or apprenticeship program that

covers hands-on training for the safe climbing of ladders or step bolts; and

4.7.1.3. Shall be protected by a fall protection system when reaching their work position.

4.8. Employees will require retraining under any of the following conditions:

4.8.1. Changes in the workplace render previous training obsolete;

4.8.2. Changes in the types of fall protection systems or equipment to be used render previous training obsolete; or

4.8.3. Inadequacies in an employee's knowledge of use of fall protection systems or equipment or observed behavior indicate that the employee has not retained the required training.

4.9. EH&S

4.9.1. EH&S shall maintain a written training certification record containing the following information:

4.9.1.1. The name of the employee trained;

4.9.1.2. The name of the person who conducted the training; and

4.9.1.3. The date of the training for Competent Persons in Fall Protection and Scaffolds, and Qualified Climber.

4.9.2. The written certification record shall contain the following information:

4.9.2.1. The name of the employee trained;

4.9.2.2. The date of training; and

4.9.2.3. The signature of the person who conducted the training.

5. Fall Hazards

5.1. Each department shall be responsible to inspect for potential fall hazards and to have each potential fall hazard evaluated by a competent person.

5.1.1. Falls may be classified into three general categories:

5.1.1.1. Slips, trips and falls on the same level;

5.1.1.2. Falls on stairs; and

5.1.1.3. Falls from elevations.

5.1.2. Slips and trips are generally caused by a lack of good housekeeping and inadequate maintenance of walking and working surfaces. Employees should keep their area clean and orderly.

5.1.3. If they are not equipped to eliminate a hazard, they should contact the appropriate maintenance personnel to correct the problem. These hazards may include icy sidewalks, wet floors, torn floor coverings and stair treads, and missing or broken hand rails and guard rails.

5.2. Fall hazards from elevations include, but are not limited to, unprotected sides and edges of roofs, excavations, skylights, floor holes, wall openings, and all other walking or working surfaces where personnel can possibly fall four feet or more to a lower level.

5.2.1. Personnel should alert their supervisors to potential fall hazards not already identified and controlled. The following are fall hazards which require protection.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

5.2.1.1. Open sided floors, platforms, and runways four feet or more in height.
5.2.1.2. Open sided floors, ramps, walkways etc. that are adjacent to or above dangerous operations must be guarded regardless of height.
5.2.1.3. Wall openings from where there is a drop of more than 4 feet.
5.2.1.4. Open windows from which there is a drop of more than 4 feet and the bottom of the window is less than 3 feet above the floor or platform.

5.2.1.5. Hatchways and chutes floor openings.
5.2.1.6. Any opening more than 4 feet in elevation where a significant portion of the body is leaning over or through to perform work.
5.2.1.7. Skylights that are even with the roof surface, or that may otherwise serve as a walking/working surface.
5.2.1.8. Scaffolds over 6 feet.
5.2.1.9. Aerial lift devices.

5.3. Protection from overhead falling hazards must be provided.

5.3.1. Placement of toe boards and the use of hard hats shall be required.
5.3.2. Equipment shall not be stored within four feet of an unprotected edge.
5.3.3. Canopy structures may be required in high traffic areas.
5.3.4. The area to which objects could fall must be barricaded and individuals not equipped with hard hats prohibited from entering.

6. Engineering Controls:

A competent person must determine if engineering controls can eliminate or lessen the hazard of the work area or job site. Engineering controls shall be provided where possible to minimize fall hazards. Engineering controls of fall hazards consist of the following:

6.1. Guardrails and Toeboards: These requirements apply to temporary controls on job sites as well as permanent fixtures in general work areas.

6.1.1. The A standard railing consists of a top rail, mid rail, and posts and is 42 inches high from the top of the rail to the floor, platform, runway or ramp. Nominal height of the mid rail is 21 inches;
6.1.2. Standard toe boards must be a minimum of 4 inches high (3 << inches for construction), no more than 1/4 inch clearance to the floor. If a mesh material is used, the opening must be less that 1 inch;
6.1.3. The anchoring of posts and framing of members for railings of all types must be of such construction that the completed structure is capable of withstanding a load of 200 pounds applied in any direction at any point on the top rail;
6.1.4. Guardrail systems have a surface that prevents injuries such as punctures and lacerations and prevents snagging of clothing; and
6.1.5. When guardrail systems are in hoisting areas, a chain gate or removable guardrail section shall be in place when not being used.

6.2. Skylights

6.2.1. The Skylights that may be used at a walking or working surface must be protected by a standard railing, standard skylight screen, grill work with 4 by 4 inch openings or slatwork with 2-inch openings; and

6.2.2. Standard skylight screens must be capable of withstanding minimum load of 200 pounds applied perpendicular to any point on the screen and will not deflect under ordinary loads and impacts and break glass.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

6.3. Covers

6.3.1. Covers for holes, including grates, shall be capable of supporting, without failure, at least twice the weight of employees, equipment, and materials that may be imposed on the cover at any one time;
6.3.2. Covers located on roadways and vehicular aisles shall be capable of supporting, without failure, at least twice the maximum axle load of the largest vehicle expected to cross over it;
6.3.3. All covers shall be secured when installed so as to prevent accidental displacement by the wind, equipment, or employees;
6.3.4. Covers shall be marked with the word "Hole" or "Cover" to provide warning of the hazard when it is not readily apparent; and
6.3.5. While a cover is not in place, the pit or trap opening shall be constantly attended by someone or shall be protected on all exposed sides by removable standard railings.

7. Fall Protection Personal Protective Equipment

7.1. Personal protective equipment shall be used to minimize fall hazards where engineering controls do not eliminate the hazard or in conjunction with engineering controls.

7.1.1. Fall protection equipment is divided into five functional categories:

7.1.1.1. Fall Arrest,
7.1.1.2. Positioning,
7.1.1.3. Suspension,
7.1.1.4. Retrieval and
7.1.1.5. Restraint.

7.2. Fall Arrest

7.2.1. The use of a personal fall arrest system is the required personal protective equipment for fall hazards at the **company name**.
7.2.2. A personal fall arrest system consists of a full-body harness, lanyard, and anchor point OR a full-body harness, lanyard, lifeline, anchor point, and deceleration/grabbing device.
7.2.3. All fall protection equipment shall meet or exceed appropriate American National Standards Institute (ANSI) standards.
7.2.4. **Company name** employees shall use only commercially manufactured equipment specifically designed for fall protection and certified by a nationally recognized testing laboratory.
7.2.5. All fall protection equipment must bear the marking of the manufacturer and approvals for specified use. Requirements for a personal fall arrest system include but are not limited to the following:

7.3. Body Harness

7.3.1. Only full-body harnesses shall be used. The use of a body belt is prohibited.

7.4. Connecting Device /Shock-absorbing lanyards and lifelines

7.4.1. Lanyards and lifelines shall have a minimum breaking strength of 5000 pounds;
7.4.2. Lanyards shall not exceed six feet in length. Lanyards used on aerial lift devices should not exceed 4 feet in length to reduce slack;

7.4.3. Ropes and straps (webbing) used in lanyards, lifelines, and strength components of body harnesses shall be made from synthetic fibers;
7.4.4. Connecting assemblies shall have a minimum tensile strength of 5,000 pounds;
7.4.5. Self-retracting lifelines and lanyards shall have a tensile strength of at least 3000 pounds and limit free fall to two feet or less (5,000 pounds for ripstich lanyards, and tearing and deforming lanyards);
7.4.6. Personal fall arrest systems shall limit the maximum arresting forces to 1800 pounds with a full body harness;
7.4.7. The maximum free fall distance is six feet for all systems;
7.4.8. The maximum deceleration distance is 3.5 feet;
7.4.9. Personal fall arrest systems shall have sufficient strength to withstand twice the potential impact energy of the falling employee;

7.4.10. Lifelines shall be protected against cutting and abrasions;
7.4.11. Horizontal lifelines shall be designed, installed and used under the supervision of a qualified person, as part of a complete personal fall arrest system, which maintains a safety factor of two. On suspended scaffolds or similar work platforms with horizontal lifelines which may become vertical lifelines, the devices used to connect to a horizontal lifeline shall be capable of locking in both directions on the lifeline; and
7.4.12. Each employee shall be attached to a separate lifeline when vertical lifelines are used. On suspended scaffolds or similar work platforms with horizontal lifelines which may become
7.4.13. vertical lifelines, the devices used to connect to a horizontal lifeline shall be capable of locking in both directions on the lifeline.

7.5. Anchorage /Anchorage point and anchorage connector

7.5.1. Anchorages used for personal fall arrest systems shall be independent of any anchorage being used to support or suspend platforms and be capable of supporting at least 5000 pounds per employee attached, or shall be designed, installed (temporarily or permanently), and used as part of a complete fall arrest system which maintains a factor of two and under the supervision of a qualified person;
7.5.2. A qualified person shall determine all anchor points, both temporary and permanent. Permanent anchor points shall be properly marked;
7.5.3. Personal fall arrest systems shall not be attached to guardrail systems, nor shall the be attached to hoists except as specified in other regulations; and

7.6. Positioning

7.6.1. A positioning device is not a substitute for a personal arrest system and is limited to use as system rigged to allow an employee to be supported on an elevated vertical surface, such as a wall, and work with both hands free while leaning.
7.6.2. Where positioning device is used, it shall comply with the following:
7.6.2.1. Only a full-body harness shall be worn as part of a positioning device system. Bodybelts alone are not acceptable;
7.6.2.2. Positioning devices shall be rigged such that a free fall cannot be more than 2 feet; and
7.6.2.3. Positioning devices shall be secured to an anchorage point capable of supporting at least twice the potential impact load of an employee's fall or 3,000 lbs, whichever is greater.

7.6.3. **Suspension**

7.6.3.1. Personal suspension systems are used for window washing and painting and are designed to lower and support a worker to perform tasks. The components of a suspension system are:

7.6.3.1.1. Full-Body Harness;
7.6.3.1.2. Workline;
7.6.3.1.3. Anchorage; and
7.6.3.1.4. Positioning device such as a boatwains chair.scaffold. Since the suspension system components are not designed to arrest a free fall, a back-up fall arrest system should be used in conjunction with the personal suspension system that would activate only if the worker were to experience a free fall.

7.7. Retrieval

7.7.1. Personal retrieval systems are used for confined space entry and on-entry rescue. Refer to the Company name *Confined Spaces Plan* for information on confined spaces entry. Personal retrieval systems consist of the following:

7.7.1.1. Full body hardness;
7.7.1.2. Retractable lifeline/rescue unit; and
7.7.1.3. Tripod.

7.8. Restraint

7.8.1. A restraint line is a device which is attached between the employee and an anchorage point to prevent the employee from walking or falling off an elevated surface. It does not support an employee at an elevated surface, but rather, prevents the employee from leaving the elevated surface or work position.

Prompt rescue shall be provided for personnel who have fallen by contacting 9-1-1 or radioing for help. No work shall be performed where an emergency cannot be immediately observed and prompt rescue assistance summoned.

7.9.2 Any other personal protective equipment deemed necessary for the task under the Personal Protective Equipment Standard must be worn. This includes but is not limited to hard hats, gloves, safety glasses, and steel toed boots. Hard hats shall be worn within an area beneath elevated work where objects could fall from a height and strike a worker. Refer to the *UM Personal Protective Equipment Program* for more information.

8 Equipment Inspections and Maintenance

8.9 Impact Loading

8.9.2 Any fall arrest system or component that has been used to arrest a fall (impact loading) shall be immediately removed from service until is inspected and determined by a competent person to be undamaged.

8.10 Inspection

8.10.2 Visual equipment inspections shall be conducted by personnel prior to each use. If, upon inspection, a piece of equipment shows any signs of wear it must immediately be removed from service and the supervisor notified.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

8.11 **Maintenance** :

8.11.2 When needed, fall protection devices should be washed in warm water using a mild detergent, rinsed thoroughly in clean warm water and allowed to dry at room temperature.

8.11.3 Stow equipment in clean area away from strong sunlight and extreme temperatures which could degrade materials.

8.11.4 Check the manufacturer's recommendations for cleaning, maintenance and storage information.

9 Roofing:

The hazards associated with work on roofs includes falling through openings and falling off edges. The protection of openings is discussed in the engineering controls section of this program. Effective roof work fall protection techniques are intended to protect workers while providing the mobility and comfort necessary to perform work tasks. Several techniques are available and are described below.

9.1 **Low-slope or Flat Roofs** :

9.1.1 Each employee engaged in roofing activities on low-slope roofs, with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system. Or, on roofs 50-feet (15.25 m) or less in width the use of a safety monitoring system alone [i.e. without the warning line system] is permitted.

9.2 **Steep roofs**

9.2.1 Each employee on a steep roof with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems with toeboards, safety net systems, or personal fall arrest systems.

9.3 **Personal Fall Arrest System**

9.3.1 The system of choice for fall protection on roofs is the personal fall arrest system;

9.3.2 Requirements for personal fall arrest systems are found in the Fall Protection Personal Protection Equipment section of this program; and

9.3.3 Personal fall arrest systems for roof work must be designed by a qualified person.

9.4 **Designated Areas**

As an alternative to installing guardrails, a designated area may be established. The following condition and requirements must be met in order to use designated areas in lieu of other fall protection measures:
The work must be of a temporary nature, such as maintenance on roof top equipment;

9.4.1 Designated areas shall be established only on surfaces that have a slope from horizontal of 10 degrees or less; and
9.4.2 The designated area shall consist of an area surrounded by a rope, wire, or chain and supporting stanchions.

9.4.2.1 After being erected with the line attached, stanchions shall be capable or resisting, without tipping over, a force of at least 16 pounds applied horizontally against the stanchion;
9.4.2.2 The line shall have a minimum breaking or tensile strength or 500 pounds;
9.4.2.3 The line shall be attached at each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in adjacent sections before the stanchion tips over;
9.4.2.4 The line shall be installed in such a manner that its lowest point is no less that 34 inches nor more than 39 inches from the work surface;
9.4.2.5 The line forming the designated area shall be clearly visible from any unobstructed location within the designated area up to 25 feet away;
9.4.2.6 The stanchions shall be erected as close to the work area as is permitted by the task;
9.4.2.7 The perimeter of the designated area shall be erected no less than 6 feet from the unprotected side or edge; and
9.4.2.8 Access to the designated area shall be by a clear path formed by two lines attached to stanchions.

10 Scaffolds

10.1 Use of Scaffolds

10.1.1 **Selection** The proper scaffold selected for the task by the competent person is based upon the type of work to be conducted and the working load to be supported.

10.1.1.1 Light duty scaffolds are intended for workers and tools only. The design load should be that it will support a working load of 25 pounds per square foot;
10.1.1.2 Medium duty scaffolds are intended for workers, tools and construction materials. The design load should be that it will support a working load of 50 pounds per square foot; and
10.1.1.3 Heavy duty scaffolds are intended for workers, tools, stored materials, and construction materials. The design load of the scaffold should be that it will support a working load of 75 pounds per square foot.
10.1.1.4 All scaffolds must be capable of supporting at least four times the design load.

10.2 General Requirements

10.2.1 Fall protection is required for all scaffold use 6 feet above a lower level.
10.2.2 All scaffolds, where work is conducted in excess of 6 feet in height, shall have 4 inch toeboards;
10.2.3 A scaffold shall not be moved while personnel are on it;
10.2.4 Follow all manufacturer's guidelines and special warnings if the scaffold is commercially produced;

10.2.5 The maximum work level height shall not exceed 4 times the least base dimension of the scaffold. Example: a four foot by six foot scaffold cannot exceed sixteen feet in height at the work platform level;
10.2.6 The minimum working platform width is two feet;
10.2.7 The supporting structure for the scaffold must be rigidly braced, using adequate cross bracing or diagonal bracing with rigid platforms at each work level;
10.2.8 Working platforms should have a nonslip surface;
10.2.9 Scaffolds should be used only on an even surface;
10.2.10 The platform surface should be kept clear of extraneous tools and materials;
10.2.11 The work level platform shall be wood, aluminum, plywood planking, steel or expanded metal for the full width of the scaffold, except for necessary protected openings
10.2.12 Work platforms shall be secured in position;
10.2.13 All work platform planking shall be in compliance with OSHA 1926.453(a)(3)(v). Wood shall be compliance grade lumber. Planks shall be overlapped a minimum of 12 inches and extended over supports 6 - 12 inches;
10.2.14 Follow all manufacturer guidelines in the assembly of the scaffold. Do not use or assemble the scaffold, if unsure of the correct assembly procedure;
10.2.15 Hard hats must be worn within an area beneath elevated work where objects could fall from a height and strike a worker; and
10.2.16 Mobile scaffolds shall not be moved unless the surface of travel is within 3 degrees of level and free of pits, holes and obstructions, and the employee on the scaffold has advanced knowledge of the movement.
10.2.17 **Inspection of Scaffolds** Prior to the use of any scaffold, an inspection must be conducted, and then daily during usage of the scaffold.

10.2.17.1 Carefully examine the scaffold for broken or missing cross bracing, broken supporting structure, working platform, and other damaged parts. In addition, all walking and working surfaces must be free of grease, oil, paint, or other slippery substances;
10.2.17.2 The scaffold should be equipped with positive wheel lock casters that are secured in place; The joint between working platform and supporting structure must be tight, and all hardware and fittings should be attached firmly. Movable parts should operate freely without binding or undue play;
10.2.17.3 All wood parts must be free of sharp edges and splinters. Visually inspect the scaffold to be free of shakes, warpage, decay or other irregularities. Metal parts must be free of sharp edges, burrs and corrosion. Inspect for dents or bends in supporting structure, cross braces and walking/working surfaces;
10.2.17.4 Check all working platform to support structure connections, hardware connections and rivets. If a scaffold tips over, inspect the scaffold for damage before continuing work; and
10.2.17.5 Damaged scaffolds must be withdrawn from service and either repaired or destroyed. When a defect or unsafe condition is found, personnel shall tag or mark the scaffold so that it will not be used until corrective action is taken. Defective or unsafe situations shall be reported to the supervisor. Field repairs and the fabrication of improvised scaffolds are prohibited.

10.3 **Maintenance of Scaffolds**

10.3.1 All scaffold repairs must be done by a qualified person.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

10.4 **Storage of Scaffolds**

10.4.1 Scaffolds should be disassembled prior to storage.
10.4.2 Scaffolds should be stored where they can be inspected easily and can be reached without causing accidents. The storage area should be well ventilated and away from sources of heat and moisture.

11 Aerial Lifts

11.1 Aerial lifts include the following types of vehicle mounted aerial devices used to elevate personnel to job sites above ground:

11.1.1 **Articulating boom platforms** are designed to reach up and over obstacles.
11.1.2 **Extensible or telescoping boom platforms** may extend over one hundred feet.
11.1.3 **Vehicle mounted bucket lifts** are used to repair utility lines.
11.1.4 **Scissor lifts** extend into the air via a series of crisscross supports.
11.1.5 **Personal man lifts** are lightweight and designed for one person to use indoor.

11.2 **Specific requirements**

11.2.1 Aerial ladders shall be secured in the lower traveling position before the truck is moved for highway travel;
11.2.2 Lift controls shall be tested each day prior to use;
11.2.3 Only personnel authorized by a fall protection competent person shall operate an aerial lift:
11.2.4 Employees shall always stand firmly on the floor of the basket and shall not sit or climb on the edge of the basket or use planks, ladders, or other devices for a work position;
11.2.5 A full-body harness shall be worn and a lanyard attached to the boom or basket when working from an aerial lift (exception: a harness is not required in a scissor lift or personal man lift with surrounding guardrail system and closing gate or latch chain);
11.2.6 Belting off to an adjacent pole structure, or equipment while working from an aerial lift shall not be permitted;
11.2.7 Boom and basket load limits specified by the manufacturer shall not be exceeded;
11.2.8 The brakes shall be set and when outriggers are used, they shall be positioned on pads or other solid surface. Wheel chocks shall be installed when using an aerial lift on an incline;
11.2.9 An aerial lift truck shall not be moved when the boom is elevated in a working position, except for equipment which is specifically designed for this type of operation;

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

11.2.10 Articulating and extensible boom platforms shall have both platform and ground controls; and

11.2.11 Before moving an aerial lift for travel, the boom shall be inspected to ensure that it is properly cradled and outriggers are in the stowed position.

11.3 **Minimum Safe Approach Distances (M.S.A.D)** The minimum safe approach distances to energized power lines and parts must be maintained.

Voltage Range (phase to phase)	Minimum Safe Approach Distance (Feet)
0 to 300 V	Avoid Contact
Over 300V to 50 kV	10

12 Portable Ladders/Use of Portable Ladders

12.1 The proper ladder must be selected for the task. General rules include the following:

12.1.1 The ladder chosen must be long enough to provide access to the work area without necessitating standing on the top two steps of a stepladder or the top three rungs of a straight ladder;

12.1.2 The ladder selected must be sufficient for the weight of the employee plus the weight of any tools and materials:

- Type 1A-Extra-heavy industrial ladder will support 300 lbs.
- Type 1-Heavy-duty industrial ladder will support 250 lbs.
- Type 2-Medium-duty commercial ladder will support 225 lbs.
- Type 3-Light-duty household ladder will support 200 lbs.;

12.1.3 When a straight ladder is used to gain access to a roof, the side rails should extend at least three feet above the support point at the eave, gutter, or roof line;

12.1.4 Never splice together short ladders to form a longer ladder;

12.1.5 Never place ladders on boxes, barrels, or other unstable bases for additional height;

12.1.6 Ladders must be placed on level surfaces. Although ladder feet or shoes provide an important measure of safety, they cannot compensate for uneven ground unless they are designed with adjustable feet;

12.1.7 Be alert to slippery surfaces. Nonslip bases are not a substitute for safety in placing, lashing, or holding a ladder on oily, metal, concrete, or other slippery surfaces;

12.1.8 Do not use ladders for unintended purposes;

12.1.9 Do not use a metal ladder when working on or near electrical equipment;

12.1.10 The distance from the bottom of a straight ladder to its support wall shall be one-quarter the working length of the ladder;

12.1.11 Where possible, straight ladders should be secured with a rope or wire at the top and blocked at the bottom;

12.1.12 The top two steps and platform of a stepladder shall not be used, and the top three rungs of a straight ladder shall not be used;

12.1.13 Do not over-reach, jump or slide a ladder while on it. Ladders shall not be moved, shifted, or extended while occupied;
12.1.14 Always face the ladder and use both hands while ascending or descending.
12.1.15 Tools or materials should be raised by means of a rope after the climber has reached the working position. Carrying heavy loads up or down ladders is prohibited;
12.1.16 Barricades and warning signs should be posted when ladders are placed near doors or other locations where they could be struck;
12.1.17 Two workers shall handle and set up all extension ladders;
12.1.18 Ladders should not be used by more than one person at a time unless they are designed for such use;
12.1.19 The bracing on the back side rails of stepladders is designed only for increasing stability, not for climbing;
12.1.20 Ladders shall not be used horizontally as platforms, runways, or scaffolds.
12.1.21 Extension ladders must have proper overlap.

- Three foot overlap for 32 foot ladder;
- Four foot overlap for 32 to 36 foot ladder;
- Five foot overlap for 36 to 48 foot ladder; and
- Six foot overlap for 48 foot ladder.

12.1.22 Make certain that both automatic locks of the extension ladder are in proper position before ascending the ladder;
12.1.23 Straight ladders and stepladders that exceed 10 feet may be held by another person for steadying;
12.1.24 The area around the top and bottom of the ladder shall be kept clear; and
12.1.25 Hard hats must be worn within an area beneath elevated work where objects could fall from a height and strike a worker.

12.2 **Inspection of Ladders Prior to use of any ladder, an inspection must be performed:**

12.2.1 Carefully examine the ladder for broken or missing rungs or cleats, broken side rails, and other damaged parts;
12.2.2 All cleats, rungs, and side rails must be free of grease, oil, paint, or other slippery substances;
12.2.3 The ladder should be equipped with feet that are secured in place;
12.2.4 The joint between steps and side rails must be tight, and all hardware and fittings should be attached firmly. Movable parts should operate freely without binding or undue play;
12.2.5 All wood parts must be free of sharp edges and splinters;
12.2.6 Visually inspect the ladder to be free of shakes, warpage, decay or other irregularities;
12.2.7 Metal ladders must be free of sharp edges, burrs and corrosion;
12.2.8 Inspect for dents or bends in side rails, rungs or cleats;
12.2.9 Check step to side rail connections, hardware connections and rivets; and
12.2.10 If a ladder tips over, inspect the ladder for damage before continuing work.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

12.3 **Maintenance of Ladders**

12.3.1 Damaged ladders must be withdrawn from service and either repaired or destroyed.
12.3.2 When a defect or unsafe condition is found, personnel should tag or mark the ladder so that it will not be used until the corrective action is taken.
12.3.3 Defective or unsafe conditions must be reported to the supervisor.
12.3.4 Field repairs and the fabrication of improvised ladders is prohibited.
12.3.5 Never try to straighten a bent or bowed ladder. Remove it from service immediately.
12.3.6 Do not paint wooden ladders with solid color paints. This may mask cracks in the wood and make them hard to see. Clear wood preservative can be used to protect bare wood.
12.3.7 If exposed to greases, oils or other slippery substances, the ladder must be cleaned of the substance with solvents or steam. If the slippery substance is not completely removed, the ladder must be removed from service.

12.4 **Storage of Ladders**

12.4.1 Ladders should be stored where they can be inspected easily and can be reached without causing accidents.

13 Fixed Ladders and Stairs

13.1 **Fixed Ladders**

13.1.1 Fixed ladders should be designed to withstand a single concentrated load of at least 200 lbs;
13.1.2 Rungs of metal ladders must have minimal diameter of three quarters inch. Rungs must be at least 16 inches wide, be spaced 12 inches apart;
13.1.3 Fixed Ladders, when their location so demands, must be painted or treated with a preservative to resist deterioration;
13.1.4 The preferred pitch for a safe descent is 75 to 90 degrees. Ladders with 90 degree pitch must have two and one half feet of clearance on the climbing side. There must be a three foot clearance on ladders with a 75 degree pitch;
13.1.5 There must be at least a seven inch clearance in back of the ladder to provide adequate toe space;
13.1.6 There must be a clear width of 15 inches on each side of the center line of the ladder, unless the ladder is equipped with a cage or well;
13.1.7 Fixed ladders must have cages if they are longer than 20 feet. Landing platforms must be provided on ladders greater than 20 feet long. A platform is required every 30 feet for caged ladders and every 20 feet for unprotected ladders; and
13.1.8 Side rails must extend at least 42 inches above the landing.

13.2 **Fixed industrial stairs**

13.2.1 The following applies to all stairs around equipment, machinery, tanks etc. They do not apply to stairs used for fire exits:
13.2.2 Riser height and tread width of fixed industrial stairs should be uniform throughout any flight of stairs. All treads must be reasonably slip resistant;
13.2.3 The minimum permissible width of a stairway is 22 inches;
13.2.4 The angle to the horizontal made by the stairs must be between 30 and 50 degrees;
13.2.5 All stairs should be adequately lighted; and

13.2.6 If the tread is less than 9 inches wide the risers should be open.

13.3 **Flights of stairs having four or more risers**:

13.3.1 A stair railing is required on each opened side;
13.3.2 If the stairway is less than 44 inches wide and both sides are enclosed, at least one handrail is required, preferably on the right side descending;
13.3.3 If the stairway is greater than 44 inches wide a handrail is required on each enclosed side;
13.3.4 If the stairway is greater than 88 inches wide an intermediate stair railing located midway is required;
13.3.5 The vertical height of a stair railing must be 30 to 34 inches, and it must be of construction similar to the standard guard railing; and
13.3.6 Spiral stairways are not permitted except for special limited usage and secondary access situations where it is not practical to provide a conventional stairway.

13.4 **Embedded Stairs**

13.4.1 Individual steps used for access or egress, embedded in the walls of risers or the conical top sections of manholes must be safe, well constructed, and installed in accordance with good engineering practices;
13.4.2 Individual rungs or steps must be uniformly spaced from 12 to 16.5 inches; and
13.4.3 The use of steps in personal access holes should be designed to prevent the foot from sliding off the end.

13.5 **Alternating Tread Stairs**

13.5.1 Alternating tread type stairs are permitted if they are installed, used, and maintained according to the manufacturer's recommendations:

13.5.1.1 The stair must be installed at an angle of 70 degrees or less; and
13.5.1.2 The stairs must be equipped with a handrail at each side to assist the workers in climbing or descending.

14 Walking and Working Surfaces

14.1 In general, all areas of the workplace should be kept clean, orderly, sanitary, and as dry as possible. These guidelines apply to work areas, passageways, store rooms, and service rooms:

14.1.1 All spills should be cleaned promptly. Floors in work areas must be kept free of scraps, chips, oil spills, and other debris;
14.1.2 Boxes, chairs, buckets, desks or any other device not specifically intended for use in extending reach shall not be used;
14.1.3 Areas which are constantly wet should have non-slip surfaces or mats where workers may walk or work. Where wet processes are used good drainage must be maintained;
14.1.4 Every floor, working place, and passageway must be maintained free from protruding nails, splinters, holes, and loose boards;
14.1.5 Where mechanical handling equipment is used, such as lift trucks, sufficient safe clearance must be provided for foot and vehicular traffic;
14.1.6 No obstructions that could create a hazard are permitted in aisles. All permanent

aisles must be easily recognizable; and

14.1.7 As a general condition, a standard toe board and guard rail are required where ever people walk near or beneath the open sides of a platform or similar structures; where things could fall from a structure; or where things could fall from a structure into machinery below.

Duties Requiring a "Competent Person"

Subject	Standard	Activity
Scaffolds	1926.450	Competent person means a person who, because of training and experience, is capable of identifying hazardous or dangerous conditions, of training employees to identify such conditions, and who has authorization to take prompt corrective measures to eliminate them.
Walking-Working Surfaces	1910.28	Erect tube and coupler scaffolds
Walking-Working Surfaces	1910.28	Erect tubular welded frame scaffolds
Walking-Working Surfaces	1910.28	Mason's adjustable multiple-point suspension scaffolds shall be installed or relocated in accordance with instruction of a registered professional engineer and supervised by a competent person
Walking-Working Surfaces	1910.28	Stone setters' adjustable multiple point suspension scaffolds shall be installed or relocated in accordance with instruction of a registered professional engineer and supervised by a competent person
Fall Protection	1926.502	Certify safety net systems
Fall Protection	1926.502	Inspect personal fall arrest systems and components subjected to impact loading immediately after use to determine if they are undamaged and suitable for use.
Fall Protection	1926.502	Perform the duties of the Safety Monitor when a Safety Monitor System is used
Fall Protection	1926 502	Supervise the implementation of a fall protection plan prepared by a qualified person when conventional fall protection equipment is infeasible.
Fall Protection	1926 503	Provide training to employees who are exposed to fall hazards
Scaffolds	1926.451	Supervise the erection, movement, dismantling, or altering of all scaffolds. The competent person shall determine the feasibility and safety of providing fall protection for employees erecting or dismantling supported scaffolds.
Scaffolds	1926.451	Inspect scaffolds and scaffold components before each work shift and after any occurrence which could affect a scaffold's structural integrity
Scaffolds	1926.451	Supervise the installation and relocation of mason's adjustable multiple-point scaffold.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Telecommunications	1910.268	Inspect personal protective devices, tools and equipments
Telecommunications	1910.268	Inspect and check ladders for adequate strength, good condition and that they are secured properly

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Duties Requiring a "Qualified Person"

Subject	Standard	Activity
Scaffolds	1926.450	Qualified person means one with a recognized degree or professional certificate and extensive knowledge and experience in the subject field who is capable of design, analysis, evaluation and specifications in the subject work, project or product.
Walking-Working Surfaces	1910.30	Only the manufacturer of a scaffold or his qualified designated agent shall be permitted to erect or supervise the erection of scaffolds exceeding 50 feet in height
Scaffolds	1926.451	Scaffolds shall be designed by a qualified person and shall be constructed and loaded in accordance with that design.
Scaffolds	1926.454	Each employee who performs work while on a scaffold shall be trained by a person qualified in the subject matter to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control hazards
Fall Protection	1926.503	A fall protection plan (used when conventional fall protection equipment is infeasible) shall be prepared by a qualified person and developed specifically for the site.
Fall Protection	1926.502	Anchorages used for personal fall arrest systems shall support at least 5000 pounds per employee or shall be designed, installed and used under the supervision of a qualified person.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: EMERGENCY PREPAREDNESS PLAN

POLICY 036

REF: 29CFR 1910.38 and 29CFR 1910.165

PURPOSE:
The purpose of the Emergency Preparedness Plan is to provide clearly defined procedures to protect Affordable Solar employees and assets, to limit or contain the extent of damage to facilities and property, to permit communication systems to function despite suspension of normal operating conditions and in general, to enable our employees to respond in a safe, orderly and efficient manner.

SCOPE:
The information in this policy applies to all Affordable Solar employees.
The scope of this plan is to define emergency situations, and provide specific preventive and response procedures to avoid and cope with emergencies in a safe, orderly and efficient manner.

RESPONSIBILITIES:

- It is the responsibility of the EH&S department to develop and distribute the emergency preparedness plan to all Affordable Solar employees.
- It is the responsibility of the Supervisor to train all employees in the emergency preparedness plan as it pertains to the site.
- Employees are responsible for taking any alert or notification of emergency seriously and to act according to the corresponding emergency action plan.

EMERGENCY PREPAREDNESS PLAN

Table of Contents

EMERGENCY ACTION PLANNING

1 The objectives of all emergency planning and actions include:
- 1.1 Keeping an emergency or crisis event from expanding into a disaster
- 1.2 Getting back to a normal state of operation from an emergency quickly
- 1.3 Maintaining safety for all employees and customers during an emergency condition.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

2 Emergency Management officials classify disasters by four main causes or hazard groups:
- 2.1 Natural disasters – natural hazards caused by weather including floods, tornados, and severe storms
- 2.2 Technological disasters – technical hazards caused by man-made technology as when a tanker accident releases a toxic gas or a radiation leak.
- 2.3 Civil disruption or violence – civil disasters caused by disruption or violence, such as bombings or the intentional release of harmful viruses
- 2.4 Long-term or ecological changes – ecological disasters that cause a long-term change in the Earth, such as rising levels of the ocean due to melting of the ice caps.

3 The EH&S Department has conducted a hazard assessment of potential disasters that may affect employees and operations at Affordable Solar job sites. The following emergency action plans were selected and developed as a result of the hazard assessment.

REPORTING A POTENTIAL EMERGENCY

1 For Police, Fire, and Medical Emergencies call **911** and provide the requested information.
2 Provide the following information as well:
- 2.1 Your name
- 2.2 Your location and telephone extension
- 2.3 Type of emergency
- 2.4 Special directions (if any)

PROJECT SITE EVACUATION

1 Any decision to evacuate the project site will normally be made by Management.
2 If the emergency is immediately-life threatening or threatens to damage a significant portion of the job site, the Affordable Solar Supervisor with approval of the Manager will make the decision to evacuate.
3 Employees may be notified to evacuate the project site or through direct communication from Management.
4 Employees are to:
- 4.1 Secure the work area.
- 4.2 Turn off electrical equipment.

5 Employees are to congregate at the designated meeting location or to a safe location, away from the affected building.

FIRE PLAN

See EHSOP-8 Fire Safety Plan

FLOOD ACTION PLAN

1. A flood is an inundation of a normally dry area caused by an increased water level in an established watercourse, such as a river, stream, or drainage ditch, or ponding of water at or near the point where the rain fell. Floods can occur anytime during the year. However, many occur seasonally after winter snow melts or heavy rainfall in spring and summer. Flash floods can strike any time and any place with little or no warning.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

2. Flood preparation guidelines:
   2.1. Know which areas of your job site are at greatest risk for flooding.
   2.2. Plan and practice an emergency evacuation in case of a flood. Know where to go for higher ground.
   2.3. Learn what steps, if any, needed to be taken in the event that gas, electric, and/or water main lines are shut off.
   2.4. Frequently back-up all computer information. Keep back-ups in a flood-safe location.
   2.5. Keep important documents in a safe place that is easily transportable.
   2.6. Know the location of emergency equipment, such as the fire extinguisher and first-aid kit.
   2.7. Understand the difference between a flood watch and a flood warning.

3. Flooding watch
   3.1. A flood watch indicates that flash flooding or flooding is possible within the designated WATCH area – be ALERT. It is issued to inform the public and cooperating agencies that current and developing weather conditions are such that there is a threat of flooding, but the occurrence is neither certain nor imminent.
   3.2. Verify Affordable Solar employee contact information.
   3.3. Verify all storm drains located within the Affordable Solar warehouse and yard is free from debris and obstruction, if applicable.

4. Flood Warning
   4.1. A flood warning indicates that flash flooding or flooding is already occurring or imminent within the designated WARNING area- take necessary precautions at once. When a flood warning is issued for you area, act quickly. Get out of areas subject to flooding and avoid where flooding has already occurred
   4.2. Place the appropriate flood barriers (sand bags or flood gates) at designated points and position emergency pumps, if applicable.
   4.3. Shut down and secure office equipment and property.
   4.4. Request Information Systems to backup computer system.
   4.5. Notify employees of procedures for reporting to work following the flood for recovery operations.
   4.6. Evacuate
   4.7. Do not attempt to walk or drive through water of unknown depth.
   4.8. Abandon any stalled vehicle.

5. After the flood
   5.1. Wear protective boots and gloves to avoid contact with floodwater. Floodwater may contain oils, chemicals, raw sewage, biohazard organisms, or electrical charges due to downed power lines.
   5.2. Listen to local news broadcasts to insure tap water is safe to drink.
   5.3. Document damages by photos and written descriptions. Keep detailed records of the cleanup costs.
   5.4. Report all losses to your Manager and the EH&S department.

CHEMICAL SPILL RESPONSE PLAN -
See EHSOP-24 – Hazardous Waste /Spill Procedure

WORKPLACE VIOLENCE PLAN
See EHSOP-33 – Workplace Violence Prevention Program

EMPLOYEE INJURY

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

See EHSOP-3 – Incident Reporting

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: WELDING SAFETY & HOT WORK

POLICY 037

REFERENCE: 29 CFR 1910

PURPOSE

Affordable Solar shall furnish to each employee employment and a place of employment that is free from recognized hazards that are causing or likely to cause death or serious physical harm. Each employee shall comply with all applicable occupational safety and health standards, rules and regulations. This program specifically is intended as a guide for the safe use of welding and burning equipment.

SCOPE

This policy applies to all Affordable Solar and subcontractors working within controlled job sites.

GENERAL

"Hot work" means riveting, welding, flame cutting or other fire or spark – producing operation. Only properly trained and instructed employees will be permitted to use electric, oxygen and fuel gas welding, burning and cutting equipment. Supervisors will also be trained in these safety requirements so that they can effectively oversee, manage and enforce safe work operations.

Employees will be protected from radiant energy eye hazards by spectacles, cup goggles, helmets, hand shields or face shields with filter lenses. Filter lenses will have an appropriate shade number, as indicated in the following table for the work performed. Variations of one or two shade numbers are permissible to suit individual preferences.

Operation	Shade No
Soldering	2
Torch brazing	3 or 4
Light cutting, up to 1 inch	3 or 4
Medium cutting, 1 -6 inches	4 or 5
Heavy cutting, over 6 inches	5 or 6
Light gas welding, up to 1/8"	4 or 5
Medium gas welding, 1/9 – ½	5 or 6
Heavy gas welding, over ½	6 or 8
Shielded metal-arc welding 1/16 to 5/32 – inch electrodes	10
Inert-gas metal-arc welding *non-ferrous) 1/16 – 5/32 inch electrodes	11
Shielded metal-arc welding: 3/16 – ¼ inch electrodes	12

RESPONSIBILITY:

1.1. Supervisors:

1.1.1. Authorization from the Supervisor or in the shop, the supervisor in charge, before cutting or welding is permitted. The area where hot work will be performed will be inspected by the Supervisor or supervisor in charge. The supervisor will designate precautions to be followed in granting authorization to proceed preferably in the form or a written permit.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

1.1.2. To the extent possible, hot work will be performed in designated locations that are free of hazards.

1.1.3. Hot work will not be performed in flammable or potentially flammable atmospheres, on or in equipment or tanks that have contained flammable gas or liquid or combustible liquid or dust-producing material, until a designated person has tested the atmosphere inside the equipment or tanks and determined that it is not hazardous.

1.1.4. Regarding fire hazards, if the object to be welded or cut cannot readily be moved, all moveable fire hazards in the vicinity will be taken to a safe place.

1.1.5. When hot work must be performed in a location that is not free of fire hazards, all necessary precautions will be taken to confine heat, sparks, and slag so that they cannot contact flammable or combustible material. If the object to be welded or cut cannot be moved and if all the fire hazards cannot be removed, then guards will be used to confine the heat sparks and slag and to protect the immovable fire hazards.

1.1.6. Inspect all leads torches, hoses, gauges and other equipment daily before use.

1.1.7. The employee should report any equipment defect or safety hazard to the supervisor and the use of the equipment will be discontinued until its safety has been assured. Repairs will be made only by qualified personnel.

1.1.8. Never heat an object lying flat on a concrete floor. Be sure to provide an air space between the material and the floor, as concrete will explode under extreme heat.

1.2. <u>Electric Arc Welding and Cutting:</u>

1.2.1. Employee designated to operate arc welding equipment will have been properly instructed and qualified to operate such equipment. Employee assigned to operate or maintain arc welding equipment will be acquainted with both company rules and OSHA requirements.

1.2.2. Employee performing gas shielded arc welding will comply with Recommended Safe Practices for Gas-Shielded Arc Welding, A6.1-1966, American Welding Society.

1.2.3. All work will have a separate and adequate ground.

1.2.4. Welding leads will not be placed in aisles, stairways or landings where they will present tripping hazards. Excessive leads and hoses should be avoided.

1.2.5. Arc welding and cutting cables will be insulated, flexible and capable of handling the maximum current required by the operations, taking into account the duty cycles.

1.2.6. Only cable free from repair or splice for 10 feet from the electrode holder will be used unless insulated connectors or splices with insulating quality equal to that of the cable are provided.

1.2.7. Before use, arc welding and cutting machine frames will be grounded, either through a third wire in the cable containing the circuit conductor or through a separate wire at the source of the current. Grounding circuits will have resistance low enough to permit sufficient current to flow to cause the fuse or circuit breaker to interrupt the current.

1.2.8. When electrode holders are left unattended, electrodes will be removed and holders placed to prevent employee injury.

1.2.9. Arc welding or cutting equipment having a functional defect will not be used.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

2. Gas Welding & Cutting:

2.1. Compressed gas cylinders:
- 2.1.1. Will have valve protection caps in place except when in use, hooked up or secured fro movement. Oil will not be used to lubricate caps:
- 2.1.2. Will be hoisted only while secured, as on a cradle or pallet, and will not be hoisted by mallet, choker sling or cylinder caps.
- 2.1.3. Will be moved only by tilting or rolling on their bottom edges.
- 2.1.4. Will be secured when moved by vehicle.
- 2.1.5. Will be secured while in use
- 2.1.6. Will have valves closed when cylinders are empty, being moved or stored.
- 2.1.7. Will be stored so that oxygen cylinders are separated from fuel gas cylinders and combustible materials by either a minimum distance of 20 feet or a barrier having a fire –resistance rating of 30 minutes.
- 2.1.8. Will not have objects that might either damage the safety device or obstruct the valve placed on top of the cylinder when in use.

2.2. Fuel gas will be used only as follows:
- 2.2.1 Before regulators are connected to cylinder valves, the valves will be opened slightly (cracked) and closed immediately to clear away dust or dirt. Valves will not be cracked if gas could reach possible sources of ignition.
- 2.2.2 Cylinder valves will be opened slowly to prevent regulator damage and will not be opened more than 1 ½ turns. Any special wrench required for emergency closing will be positioned on the valve stem during cylinder use. For "manifold" or coupled cylinders, at least one wrench will be immediately available. Nothing will be placed on top of a cylinder or associated when the cylinder is in use.
- 2.2.3 Pressure-reducing regulators will be attached to cylinder valves when cylinders are supplying torches or devices equipped with shut-off valves.
- 2.2.4 Cylinder valves will be closed and gas released from the regulator or manifold before regulators are removed.
- 2.2.5 Leaking fuel gas cylinder valves will be closed and the gland nut tightened, if the leak continues, the cylinder will be tagged, removed from service, and moved to a location where the leak will not be hazardous. If a regulator attached to a valve stops a leak, the cylinder need not be removed from the workplace but will be tagged and may not be used again before it is repaired.
- 2.2.6 When oxygen and fuel gas hoses are taped together, not more than four (4) of each 12 inches will be taped.
- 2.2.7 Hose will be inspected before use. Hose subjected to flashback or showing evidence of severe wear or damage will be tested to twice the normal working pressure but not less than 200 psi before reuse. Defective hose will not be used.
- 2.2.8 Torches will be inspected before each use for leaking shut-off valves, hose couplings and tip connections. Torches with such defects will not be used.

3. Fire Watch Requirements:

3.1. Fire watchers will be required whenever welding or cutting is performed in locations where other than a minor fire might develop, or any of the following conditions exist.
- 3.1.1. Appreciable combustible material, in building construction or contents closer than 35 feet to the point of operation.
- 3.1.2. Appreciable combustibles are more than 35 feet away but are easily ignited by sparks.
- 3.1.3. Wall or floor openings within a 35-foot radius expose combustible material in adjacent areas including concealed spaces in walls or floors.

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Affordable Solar

3.2. Fire watchers will have fire extinguishing equipment readily available and be trained in its use. They will be familiar with facilities for sounding an alarm in the event of a fire. They will watch for fires in all exposed areas, try to extinguish them only when obviously within the capacity of the equipment available, or otherwise sound the alarm. A fire watch will be maintained for at least a half hour after completion of welding or cutting operations to detect and extinguish possible smoldering fires.

3.1.4. Fire watches will be trained at the worksite by the Supervisor. Training is to be documented.

3.1.5. Training will be done when employees are initially fired and annually thereafter.

3.1.6. Refer to Appendix A of this section for specific policies and procedures regarding Fire Watch assignment and responsibilities.

4. Health Precautions & Ventilation

4.1 The following requirements have been established on the basis of the following factors in arc and gas welding which govern the amount of contamination to which welders may be exposed.

4.1.1. Dimensions of space in which welding is to be done

4.1.2. Number of welders

4.1.3. Possible evolution of hazardous fumes, gases, or dust according to the metals involved.

4.1.4. When welding must be performed in a space entirely screened on all sides, the screens will be so arranged that no serious restriction of ventilation exists. It is desirable to have the screens so mounted that they are about 2 feet above the floor unless the work is performed at so low a level that the screen must be extended nearer to the floor to protect nearby workers from the glare of welding.

5. First Aid

5.1 First aid equipment will be available at all times in areas where hot work, welding, cutting or brazing are being performed.

5.1.1. All injuries will be reported as soon as possible for medical attention.

5.1.2. First aid will be rendered until medical attention can be provided.

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TITLE: UNDERGROUND SAFETY PRACTICES AND PROCEDURES

POLICY 038

PURPOSE

The following rules were designed especially for underground installations, but are to be considered as a supplement to other rules now in existence as outlined in earlier sections of this manual.

Since one of the obvious disadvantages of working on underground systems is the confined working area and close clearances with exposure to all types of grounded equipment, it is necessary to use every precaution to avoid contact with energized equipment.

There is a safe way of doing every job, and these rules will aid employees in the maintenance of underground systems safely.

GENERAL

1. Only qualified personnel shall be allowed to troubleshoot on underground primary distribution systems. It is recommended that at least two employees be present for troubleshooting on primary underground distribution systems where practical. One employee may be allowed to troubleshoot if, in the opinion of the employee's supervisor, it is safe and reasonable for the employee to work alone.

2. B. Before any work is performed on underground systems the employees involved should locate all identification signs or tags and identify cable sections. They should obtain and familiarize themselves with circuit maps located at terminal poles or dispatch points conveniently located in or near the underground system. Both terminals of each primary or secondary cable run must be physically identified. Primary cable sections between any two terminal points will be marked and identified with permanent I.D. tags. Secondary cables will be marked and identified with permanent I.D. tags on both the source and load end of a cable section in plain visible view. Secondary pedestals will be identified.

3. C. Employees are responsible for seeing that all unauthorized persons leave the work area and that they remain clear of all hazards connected with the job.

4. D. When it is necessary for employees to leave the work area it is the employees' responsibility to see that all transformer doors or equipment compartments are closed to keep unauthorized persons clear of hazardous equipment. MAKE SURE ALL LOCKS ARE IN PLACE AND LOCKED. Test all locks by pulling on them.

5. E. Only one energized secondary or service conductor within a secondary enclosure shall be worked on at any time. Protective equipment shall be used to isolate it from all others.

6. Service connections, including temporary services, inside pad mount transformers may be worked energized. If the work cannot be done safely by covering up or barricading and using other proper rubber protective equipment then de-energize the transformer, test for voltage and ground out with approved grounding devices.

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Affordable Solar

7. Faulted or suspected faulted underground transformers shall be re-energized from a remote location only. When attempting re-energization, all personnel and the public should be kept well clear of the transformer. Transformer failure can result in serious injury and property damage.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

RUBBER GLOVE USE

1. Rubber gloves shall be worn when energized primary or secondary cables are handled in any way. Precautions must be taken never to handle primary cables above the stress cone.

2. Rubber gloves shall be worn when working on energized secondaries and services.

3. Rubber gloves shall be worn when working on, or contacting a neutral.

4. Before unlocking any energized padmount or submersible enclosure, rubber gloves must be worn. Use 20 kV gloves on 7.2 kV and 14.4 kV systems.

5. The use of rubber gloves on underground systems is not to allow contact with any energized primary equipment but is to provide protection against accidental contact.

6. When work is to be performed in any enclosure such as padmounts, submersible vaults, pedestals or other enclosures containing energized equipment, rubber gloves shall be worn when unlocking, and must not be removed until after the work is complete and the enclosure is locked.

7. Rubber gloves may be removed when working on such equipment only after the equipment has been de-energized and grounded out with approved grounding devices.

8. Rubber gloves must be worn if any part of the equipment remains energized even though adjacent equipment has been removed from service and grounded out (i.e., when the primary portion of a padmount remains energized after de-energizing and grounding out the secondary compartment, rubber gloves must remain on).

OPENING AND CLOSING UNDERGROUND CIRCUITS

1. Company switching procedures shall be followed when sectionalizing underground systems. Any variations to the established switching procedures must be cleared with the Chief Dispatcher. **THE DISPATCHING PROCEDURES OUTLINED IN SECTION VI SHALL APPLY TO BOTH UNDERGROUND AND OVERHEAD ELECTRICAL SYSTEMS.**

2. When a fuse is blown or a sectionalizing device is found open on an underground system, a patrol and visual check for obvious faults or hazards shall precede the circuit being reclosed.

3. No energized cable section shall be physically inspected for possible faults. The cable section must be de-energized, tested for voltage and grounded, or tested with appropriate and approved cable testing equipment.

4. Any cable section which has been installed, replaced or repaired shall first be tested with appropriate and approved cable testing equipment before it is energized. If the test indicates the cable is not faulted, the following methods shall be used to energize the cable section:

    a. Fused disconnect, oil circuit recloser, or gang operated air switch at the dip pole.
    b. Gang operated air switch, arc quenching disconnect apparatus, padmount fused disconnect or load break elbow in switch cabinets or padmount transformer.
    c. If any of the above devices are used, other than the dip pole, the fused disconnect or padmount disconnect, all automatic reclosing devices applicable to the circuit, shall be turned off.

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Affordable Solar

5. The Company provides suitable protective equipment and it is the employees' responsibility to see that such devices are in satisfactory condition before using them. Safety glasses and clip-on face shields shall be used for switching operations as described in 703-D, above and as necessary for normal switching conditions.

6. An approved hot-stick and rubber gloves shall both be used when switches in an energized circuit are opened or closed.

7. When doing energized switching on underground distribution it is recommended that at least two workers be present.

GROUNDING UNDERGROUND CIRCUITS

NOTE: A HIGH VOLTAGE CHARGE CAN REMAIN IN AN UNDERGROUND CABLE AFTER IT HAS BEEN DISCONNECTED AND A STATIC-TYPE ARC CAN OCCUR WHEN GROUNDS ARE APPLIED TO CONDUCTORS

1. Before attempting to ground underground circuits:

    a. A visible open break shall be obtained.
    b. A voltage test shall be made:
        1) With a regular voltmeter on the secondary provided only secondaries are to be worked on.
        2) With a phasing voltmeter (AB Chance type) or other approved device on the primary.
    c. After determining that no voltage is present, a clearance may be issued in accordance with Safety Manual Rule 609-C before grounds may be applied and work begun.

2. All underground circuits or apparatus, regardless of voltage, shall be considered as energized unless they have been de-energized, tested for voltage and grounded with approved grounding devices.

3. Before working in a secondary compartment of padmounted transformers, the transformer disconnect fuse shall be opened and removed with an approved hot-stick; then isolate the primary compartment with a suitable barrier, test the secondary terminals for voltage and ground with an approved grounding device prior to work.

4. When it is necessary to perform work on a primary cable between the terminal points, the cable must be de-energized, tested for voltage and grounded at both terminal points. Before handling or cutting a primary cable, the cable must first be spiked with an approved spiking clamp and cable. The ground side shall be connected to an approved ground source and the spike shall be applied with an approved 8-foot hot stick.

5. Work on a de-energized cable termination may be done without using rubber gloves,

6. For specific methods and procedures see Personal Protective Grounding Rules 528, 529 and 530.

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Affordable Solar

Excavating

1. Prior to excavation, an effort shall be made to determine whether underground installations will be encountered.

    a. Utility companies shall be contacted and advised of proposed work prior to the start of the actual excavation.
    b. When the excavation approaches the estimated location of such installation, the exact location shall be determined.
    c. When uncovered, proper supports shall be provided for the excavating installation.

2. Excavations shall be inspected by competent persons.
    a. Before entering.
    b. After rain or other hazard-increasing occurrences.
    c. Protection against cave-ins shall be used if necessary.

3. Supporting systems shall be designed by a qualified person and shall meet accepted engineering requirements.

4. Trees, boulders, or other surface objects located so as to create a hazard shall be removed or made safe before excavating is begun.

5. If the stability of adjoining buildings is endangered, shoring, bracing, or underpinning shall be provided. Such precautions shall be inspected daily or more often as needed.

6. Banks more than 5 feet high shall be shored, laid back to a stable slope, or some other equivalent means of protection shall be provided. Banks less than 5 feet in depth shall also be effectively protected when examination of the ground indicates hazardous earth movement may be expected.

7. Supports shall be designed by a qualified person when excavation is in excess of 20 feet in depth, adjacent to structures or improvements, or are subject to vibration or ground water.

8. In excavations which employees may be required to enter, excavated or other materials shall be effectively stored and retained at least 2 feet or more from the edge of the excavation.

9. In locations where oxygen deficiency or gaseous conditions are possible, air in the excavation shall be tested prior to entry.

10. When excavations are to be left open, approved warning devices, barriers and barricades shall be placed to properly protect the public and employees.

11. It is recommended that efforts be made to excavate trenches to accommodate the work expected for the day.

12. When excavating, ditching or clearing a right of way, workers shall be spaced far enough apart to work safely without striking.

13. When employees are required to be in trenches 4 feet deep or more, an adequate means of exit, such as a ladder or steps, shall be provided and located so as to require no more than 25 feet of lateral travel.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

14. Excavation equipment shall never be oiled, greased, or refueled while the motor is running. The gasoline tank shall be filled from approved safety-type cans or pumps.

15. Operators shall keep workers and bystanders a safe distance from any machines while they are in operation.

16. Employees shall never attempt to clear the bucket or discharge chute while the equipment is in operation.

17. Employees shall not be permitted under loads handled by power shovels, derricks or hoists.

18. Ditching machines shall not be used on slopes or inclines without first preparing the right-of-way to prevent overturning.

19. If it is necessary to leave excavating equipment unattended, the blade-bucket or scoop shall be lowered to the ground and the ignition system locked.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

TITLE: CONFINED SPACE ENTRY

POLICY 039

PURPOSE

This section provides a uniform practice for TNMP employees, protects their health and reduces the probability of injury while working in confined spaces. These rules provide guidelines for workers to recognize, enter, and work in confined spaces.

DEFINITIONS

A. CONFINED SPACE
A confined space is defined as an area which:
1. Is large enough and so confined that an employee can bodily enter and perform assigned work.
2. Has limited or restricted means for entry or exit (for example tanks, vessels, silos, storage bins, hoppers, transformers, regulators, circuit breakers, vaults/manholes and pits, are spaces that may have limited means of entry and exit).
3. Is not designed for continuous employee occupancy.

B. PERMIT-REQUIRED CONFINED SPACE
A confined space that has one or more of the following characteristics:
1. Contains or has the potential to contain a hazardous atmosphere.
2. Contains a material that has the potential for engulfing an entrant.
3. Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls, or by a floor which slopes downward and tapers to a smaller cross-section, or
4. Contains any other recognized serious safety or health hazard.

C. NON-PERMIT-CONFINED SPACE

A non-permit-confined space means a confined space that does not contain, or with respect to atmospheric hazards, have the potential to contain any hazard capable of causing death or serious physical harm.

D. ENTRY SUPERVISOR

A person capable (by education and/or training) of anticipating, recognizing and evaluating hazardous or unsafe conditions in a particular confined space. This person shall be responsible for determining if acceptable entry conditions are present at a permit space where entry is planned, authorizing entry, overseeing entry operations and terminating entry as necessary. An entry supervisor shall have received training in:
1. Respiratory Protection
2. Hazardous Materials TNMP Safety Manual Section XIV Page 4 Revised 07/15/2010
3. Confined Spaces
4. Atmospheric Testing/Monitoring Instrument Training
5. Rescue Practices

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

E. ATTENDANT
An individual stationed outside one or more permit spaces who monitors and maintains an accurate account of the authorized entrants and performs all attendant's duties as outlined. An attendant shall have training in:
1. Respiratory Protection
2. Hazardous Materials
3. Confined Spaces
4. Atmospheric Testing/Monitoring Instrument Training
5. Rescue Practices

F. AUTHORIZED ENTRANT
An employee who must be authorized by the entry supervisor to enter a permit space. All authorized entrants shall receive training in:
1. Respiratory Protection
2. Hazardous Materials
3. Confined Spaces
4. Atmospheric Testing/Monitoring Instrument Training
5. Rescue Practices

G. RESCUE PLAN
Confined space entries (both permit-required and non-permit-required) are only performed after the pre-entry elimination of most hazards including electrical, moving parts, engulfment, and hazardous atmospheres (such as toxic or flammable, oxygen deficient or oxygen enriched). The only remaining hazard that cannot be eliminated is an internal configuration that may trap the entrant, such as those found inside large transformers, in which rescue procedures must be planned accordingly.
1. All confined space entry sites shall have at least one attendant present that is trained in first aid and CPR.
2. The entry permit shall contain information on methods of summoning outside services (fire and/or ambulance) if needed in aiding the rescue effort and for transportation to medical facilities.
3. Attendants, and other confined space trained personnel, may perform rescue of entrants who cannot exit on their own due to injury or entrapment caused by the internal configuration of the space.
4. Rescue equipment shall be provided at all confined space sites: TNMP Safety Manual Section XIV Page 5 Revised 07/15/2010

    a. Below ground vaults: ladder
    b. Manholes, breakers, and transformers: full body harness, rescue wristlets, rescue tripod, mechanical retrieval line, nylon slings for other anchor tie-off points (steel, bus, or bushings).

PERMIT SYSTEM

A. Entry into a permit entry space shall be by permit only. The permit certifies in writing that the space atmosphere has been evaluated and specifies that acceptable entry conditions exist. The entry supervisor shall be responsible for the completion of the entry permit, and the overall accountability for safe entry operations.
B. A copy of the active permit shall be maintained at the permit entry space location. Upon completion of the job, the original entry location copy and a copy of any related clearances shall be retained.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

Note: Completed permits shall be retained for at least one (1) year to facilitate the review of the permit-required confined space program as required by OSHA 1910.146.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

C. ALTERNATE PROCEDURES

1. If the only hazard posed by the permit space is an actual or potential atmospheric hazard, the requirements of the entry permit and the need for an attendant may be suspended provided all the conditions set forth in items #2 through #7 below are met.
2. The only hazard posed by the space is an actual or potential atmospheric hazard.
3. It can be demonstrated that continuous forced air ventilation alone is sufficient to maintain the space safe for entry.
4. Monitoring and inspection data are developed that supports #1 and #2 above.
5. If initial entry is required to obtain the above data, it shall be performed in full compliance with the permit space entry program.
6. All determinations and supporting data are documented and made available to each employee who enters the permit space. **Note: The entry permit may be used to document the supporting data.**
7. Entry into the permit space is performed in accordance with the following requirements:
   a. Any conditions making it unsafe to remove an entrance cover shall be eliminated before the cover is removed.
   b. A railing or other temporary barrier that will prevent an accidental fall through the opening, and that will protect the employee working in the space from foreign objects entering the space, shall properly guard all openings.
   c. The internal atmosphere shall be tested prior to entry with a calibrated direct reading instrument in the following order: TNMP Safety Manual Section XIV Page 6 Revised 07/15/2010
      1) Oxygen level,
      2) Flammable gases & vapors, and
      3) Potential toxic air contaminates.

      For safe entry, the atmospheric oxygen concentration shall not read below 19.5% nor above 23.5%; flammable gas or vapors shall not read in excess of 10% of its Lower Flammable Limit (LFL); and toxic air contaminates shall read below published Permissible Exposure Limits (PEL).
   d. There may be no hazardous atmosphere in the space while being occupied by an employee.
   e. Continuous forced air ventilation from a blower (750 cfm minimum) must be used as follows.
      1) Forced air ventilation must remove any hazardous atmosphere prior to entry.
      2) Forced air ventilation shall be so directed as to ventilate the immediate area in which the employee is working and shall continue until all employees have left the space.
      3) The air supply shall be from a clean source and shall not increase the hazards within the space.
   f. The atmosphere within the space shall be continuously tested as necessary.
   g. If a hazardous atmosphere is detected during entry
      1) The space shall be evacuated immediately.
      2) The space shall be evaluated to determine the cause and nature of the hazardous atmosphere before any subsequent entry.
   h. The entry supervisor shall verify that the space is safe for entry and that all measures required by this section have been taken. The entry permit serves as date, location of the space, and signature of the person providing the certification and shall be made available to each employee entering the space prior to entry.

D. RECLASSIFICATION PROCEDURE

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

1. If the permit space poses no actual or potential atmospheric hazards, and if all hazards within the space are eliminated, the space may be reclassified as a non-permit confined space. The procedures under which the reclassification of a permit-confined space may be accomplished are set forth in #2 through #4 below.
2. If the permit space poses no actual or potential atmospheric hazard and if all hazards within the space have been eliminated without entry into the space, the space may be reclassified as a non-permit space for as long as the non-atmospheric hazards remain eliminated.
3. If it is necessary to enter the permit space to eliminate the hazards, entry shall be performed in compliance with the permit space entry program.
   Note: Control of atmospheric hazards by forced ventilation does not constitute elimination of hazards.
4. The basis for determining that all hazards have been eliminated shall be documented by completing the entry permit which certifies and contains the date, location of the space, and signature of the person making the determination. This certification shall be made available to each employee entering the space.
5. If hazards arise within a permit space that has been declassified to a non-permit space, all employees shall immediately exit the space. The space shall then be re-evaluated to determine whether it must be reclassified to a permit space.

TESTING, MONITORING, AND VENTILATION

A. Entry into a permit space shall be prohibited unless the atmosphere has been tested with a calibrated direct reading instrument for the following conditions in the order given.
   1. Oxygen content,
   2. Flammable gases and vapors, and
   3. Potential toxic air contaminates.

B. Monitoring of a permit entry space shall be done continuously and documented on the entry permit. Non-permit entry space monitoring will also be done as determined by the entry supervisor.

C. Oxygen shall never be used for ventilation.

D. In atmospheres Immediately Dangerous to Life and Health (IDLH), positive pressure self-contained breathing apparatus (SCBA) or an air line with an escape pack shall be used. The attendant shall have suitable reserve equipment.

E. Before cleaning the interior of any tank, the contents shall be drained off, and the clean-out doors shall be opened. All pockets in tanks or pits, where hazardous vapors can collect, shall be ventilated.

F. If atmospheric tests indicate the atmosphere is combustible, entry shall not be made until the space is ventilated and the atmosphere is determined, by testing, to be safe. Thereafter, continuous ventilation shall be provided and continuous monitoring applied.
   Note: There may be no hazardous atmosphere within the space whenever any employee is inside the space.

PERSONAL PROTECTIVE EQUIPMENT

The environment and planned activities in a confined space will determine what type of personal protective equipment is needed to perform the work in a safe manner.

LIGHTING

A. Any temporary lighting used in a permit entry space subject to potentially explosive atmospheres shall be an explosion proof type.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar

B. Any temporary lighting in a permit entry space shall be a 12-volt or less extension light or battery powered portable light or be served through a ground fault circuit interrupter.
C. Each employee entering a confined space shall have a flashlight if loss of installed lighting poses a hazard.

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar
SPECIFIC PERMIT REUQIRED CONFINED SPACE REQUIREMENTS

A. When an employee enters a permitted entry space, a retrieval system consisting of a chest or full body harness with a retrieval line attached, shall be worn by the authorized entrant unless the retrieval equipment would increase the overall risk of entry, or would not contribute to the rescue of the entrant.
B. An attendant shall be required to maintain communications (visual, voice, or signal wire) with the authorized entrants, and to monitor the activities inside and outside the space, to determine if it is safe for the entrants to remain in the space.
C. If any employee will be working in a vertical type permit space more than 5 feet deep, a mechanical retrieval device shall be provided before work begins to enable the attendant to perform a non-entry rescue if necessary.

WORK GENERATED HAZARDS

A. A cylinder or welding power source used in a permit entry space shall be placed, and secured, outside of the space where work is being performed.
B. When welding or cutting in a permit entry space, the torch valves and gas and oxygen supply valves outside the permit entry space shall be shut off overnight or any other prolonged period when work is suspended. Where practical, torches and hoses shall be removed from the permit entry space.
C. When stick electrodes are used in a permit entry space and welding is suspended during any prolonged period, the electrode shall be removed from the holder and the machine shut off. TNMP Safety Manual Section XIV Page 9 Revised 07/15/2010
D. Air Replacement: All welding and cutting operations performed in a permit entry space shall be adequately ventilated to prevent accumulation of toxic materials or possible oxygen deficiency. This applies not only to the welder but also to the helpers and others in the immediate area.

CONTROL OF ENERGY SOURCES

The provisions of the Safety Manual Section VI, Dispatching, shall be implemented to control or eliminate energy sources - mechanical and electrical - that can reasonably be expected to create a hazard.

ACCESS AND EGRESS

Adequate means shall be provided and used for safe access into and egress from confined spaces.

TNMP currently has, but is not limited to, the following identified confined spaces.
1409 Vaults

Below ground vaults are considered non-permit entry confined spaces if the following precautions are considered and followed prior to entry:

A. The entire vault cover shall be removed from any vault to be entered. Covers shall be removed with a truck where possible.
    1. The following atmospheric monitoring shall be conducted in the order given:
        a. The atmosphere shall be tested for oxygen content and it shall not be less than 19.5% and not more than 23.5%.
        b. The internal atmosphere shall be tested for flammable gas, and it must not exceed 10% of its Lower Flammable Limit (LFL).

c. The internal atmosphere shall be tested for toxic gases, if known, or suspected in the area, and shall not exceed published Permissible Exposure Levels (PEL).
d. When the above atmospheric conditions are met without forced ventilation, the vault may be entered as a non-permit space provided all other non-atmospheric hazards are eliminated and #2 through #6 below are followed.

2. Eliminate electrical and mechanical hazards that can reasonably be expected to create a hazard.
3. Orange safety mesh shall be installed around any open vault to provide a distinct boundary between work and non-work areas.
4. Water and debris shall be pumped out of the vault using a trash pump. This pump will have at least an 8 horsepower motor, a 3-inch by 15-foot non-conductive suction hose and a 3-inch by 50-foot discharge hose. **Note: Electric pumps shall not be used.**
5. A fiberglass ladder shall be used for entrance and exit to a vault and if possible should be left in place while the employee is in the vault.
6. No more than two employees shall be in the isolated vault at one time and one employee shall be on the ground level at all times.

B. Below ground vaults that fail the initial atmospheric tests shall have forced ventilation applied to reach acceptable conditions and continuous ventilation and monitoring is required throughout the occupancy of the vault. Entry shall be according to the alternate procedures as outlined in Rule1401-C.

C. Below ground vaults containing hazards other than atmospheric will be considered permit entry confined spaces.

MANHOLES

Manholes defined as a below ground space with a 20 inch to 30 inch diameter entry hole are considered permit entry confined spaces and shall be entered using appropriate procedures.

BREAKERS

Breakers, if large enough and so configured that an employee can bodily enter and perform assigned work, are normally considered non-permit confined spaces. This only applies when all hazards within the breaker can be eliminated; there is no hazardous atmosphere, and all energy sources are controlled. If forced ventilation is applied then continuous ventilation and monitoring is required, and entry shall be according to the alternate procedures as outlined in Rule1401-C.

TRANSFORMERS

Transformers, if large enough and so configured that an employee can bodily enter and perform assigned work, are considered permit entry confined spaces. This is due to the internal configuration that could trap or prevent movement of an entrant. Any work or entry into a transformer shall be performed with the full permit-required confined spaces program requirements. Body harnesses and an attached retrieval line are not required to be worn in all cases if the employer can demonstrate that they are not feasible (i.e., if they are a greater hazard or would not contribute to the rescue of an entrant-they are not required). However, every site shall have a rescue tripod, a mechanical retrieval line, body harness and/or rescue wristlets, and nylon slings for anchors to aid in the retrieval of an entrant if the need arises. **Note: Any hot work such as welding, cutting, soldering, burning, etc., to be performed inside transformers or breakers must be performed under the permit-required confined space procedures.**

EH&S OPERATING POLICIES AND PROCEDURES
Affordable Solar
FIRE WATCH AND FIRE PREVENTION POLICY

POLICY 040

1. Purpose & Scope

   1.1 To establish methods and guidelines for the training of employees in fire watch and fire protection
   1.2 This policy applies to all employees within Affordable Solar .

2. Introduction

   2.1 Affordable Solar is responsible for the development and maintenance of an effective fire protection and prevention program at each job site throughout all phases of the construction, repair, alteration, or any work. This training policy is intended for employee working as Fire watch during burning or welding performed during these activities.

3. Requirements

   3.1 Fire Watches will be trained at the worksite by the Supervisor.
   3.2 Training is to be documented.
   3.3 Training will be done when employees are initially hired and annually thereafter.

4. Training Program Content

   4.1 Cause and Prevention
      4.1.1 Fires do not just happen. They are caused by carelessness in operating equipment, handling hazardous materials and personal habits, such as smoking. Even though these actions are not usually deliberate, this still does not lessen the results.
      4.1.2 Only employees can protect themselves against these hazards by learning carefully how to prevent fires.
      4.1.3 The three main components of fire prevention are:
      4.1.4 Be alert for trouble before a fire starts.
      4.1.5 Eliminate unsafe habits that can lead to fires.
      4.1.6 Conduct a fire prevention investigation of your work area prior to work start to remove any potential fire hazards.

5. General Fire Prevention Rules

   5.1 Employees will become familiar with the four classes of fire, their burning characteristics and the proper extinguishing agent for each;
      5.1.1 Class A fires involve normal combustibles such as wood or paper, water is proper extinguisher.
      5.1.2 Class B fires involves oils and flammable liquids. CO2 and dry chemicals are the correct extinguishers.
      5.1.3 Class C fires involve electrical equipment. CO2 and dry chemicals are the correct extinguishers. Never use water on fires involving energized electrical equipment to avoid electrical shock and spreading of fire.

EH&S OPERATING POLICIES AND PROCEDURES
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5.1.4 Class D fires involve combustible metals and require special approved extinguishing agents.

5.2 Employees must never tamper with or move fire fighting equipment except for actual use.

5.3 Report any equipment defects to your supervisor.

5.4 Employees must know the location and proper operation of all protective fire equipment in the vicinity of their work areas.

5.5 Material and supplies must be stored carefully to prevent falling, spilling, etc.

5.6 All chemicals and solvents must be kept in properly labeled and approved containers.

5.7 Used rags must be kept in metal or metal containers having metal covers.

5.8 Never use flammable liquids for cleaning purposes.

5.9 To extinguish a clothing fire on yourself or another person, DROP to the ground AND ROLL to cause a smothering effect or use a fire blanket or other means if available.

5.10 Know primary and secondary exit routes from your area. Know site specific codes for emergency pages.

6. Fire Extinguisher & Other General Information

6.1 DO NOT ATTEMPT TO FIGHT A FIRE IF:

6.1.1 You do no know what is burning

6.1.2 The fire is spreading rapidly out of control.

6.1.3 The fire is between you and your exit or escape path

6.1.4 You don't have adequate equipment

6.1.5 You might inhale toxic smoke.

6.2 Employees whose work assignment may require them to use a fire extinguisher shall be trained in such use prior to the job assignment.

6.3 All fire extinguishers shall be placed in conspicuous locations near the work area. Know where the nearest fire extinguisher is located, the type of fire it should be used on and how to operate it.

6.4 Any fire extinguisher that has been used shall be returned to the Supervisor for replacement.

6.5 Keep work areas clean and orderly, free of trash and debris.

6.6 Smoking is not allowed on the project except in areas designated as smoking areas.

7. Fire Watch for Welding & Cutting Operations

7.1 Fire Watch employee shall be aware that welding sparks can travel as far as 35 feet. Safe procedures prior to and during welding operations are:

7.1.1 Ensure that the area has been checked by an authorized person with a meter for flammable gases and vapors.

7.1.2 Remove any combustibles such as paper, rags, etc

7.1.3 Have a fire extinguisher and misting hose (if required) on hand

7.1.4 Assure that proper PPE is on hand and being used and

7.1.5 Remain 30 minutes after spark producing and welding operations are over to assure that no smoldering or fires break out.

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COVID 19 RESPONSE POLICY

POLICY 040

The health and safety guidance for COVID-19 Infection Prevention is derived from local sources and is subject to change. Specific guidance, policies, and procedures will be communicated based upon the specific project location and will be applicable to the state, local, and Affordable Solar Installation, Inc. best practices.

COVID response will be reviewed as part of pre-job and ongoing jobsite hazard analysis and, if appropriate for the location, prevention measures will be included in the site specific EH&S plan and Emergency Response Plan (EAP.

gridWORKS

EHS Project Execution Plan

(Site Specific Safety Plan)

//Project Name//

gridworks

//Enter Project Name//

gridworks

ENVIRONMENTAL, HEALTH, AND SAFETY POLICY

At Gridworks, we prioritize the health, safety, and well-being of our employees, contractors, visitors, and the communities in which we operate. We are committed to fostering a culture of safety excellence through proactive measures, continuous improvement, and empowering our workforce to take ownership of their safety and that of their colleagues. Our Health and Safety Policy is founded on the following principles:

LEADERSHIP COMMITMENT: Our leadership team is fully committed to providing a safe and healthy work environment by setting clear expectations, allocating necessary resources, and demonstrating visible leadership in safety matters.

RISK MANAGEMENT: We identify, assess, and mitigate risks associated with our operations through comprehensive risk assessments, regular inspections, and proactive hazard identification processes.

TRAINING AND COMPETENCE: We ensure that all employees and contractors receive appropriate training, instruction, and supervision to perform their tasks safely and effectively. We promote continuous learning and development to enhance safety competence at all levels.

COMPLIANCE: We comply with all relevant health and safety legislation, regulations, and industry standards. We strive to exceed minimum requirements and adopt best practices to improve our safety performance continually.

COMMUNICATION AND CONSULTATION: We foster open communication channels to encourage active participation and collaboration in health and safety matters. We value feedback from our workforce and stakeholders to drive continuous improvement initiatives.

INCIDENT REPORTING AND INVESTIGATION: We promote a reporting culture where all incidents, near misses, and hazards are promptly reported, investigated, and analyzed to identify root causes and implement effective corrective actions.

STOP WORK AUTHORITY: Every individual at Gridworks has the right and responsibility to exercise Stop Work Authority when they encounter any situation that poses an imminent risk to health, safety, or the environment. This authority empowers employees to intervene, cease work, and address the concern immediately to prevent potential harm.

CONTINUOUS IMPROVEMENT: We are committed to continually reviewing and improving our health and safety performance through regular audits, performance metrics analysis, and feedback mechanisms.

EMERGENCY PREPAREDNESS: We maintain emergency response plans, conduct regular drills, and provide appropriate training to respond effectively to emergencies and minimize their impact on personnel, property, and the environment.

ENVIRONMENTAL STEWARDSHIP: We integrate environmental considerations into our health and safety management systems to minimize environmental impacts and contribute to sustainable development.

At Gridworks, safety is not just a priority but a core value guiding our daily actions. By adhering to this Environmental, Health, and Safety Policy, we strive to create a workplace where everyone returns home safely and in good health.

Bob Bellemare
Chief Executive Officer

1.0 INTRODUCTION

Gridworks provides turnkey solar and energy storage solutions for developers and utility clients through engineering, procurement, and construction (EPC) and operations and maintenance (O&M). Our proprietary technologies streamline the EPC process, saving time and money. We are also sought after for our ability to engage in creative problem-solving for early-stage renewables development.

We approach our work with passion, ingenuity, and integrity. We don't cut corners—not in our team of in-house experts, the ingenuity of our designs, our collaboration with industry partners, or our customer service. We strive to be the best in everything we do. Gridworks strongly believes agility, quality, and reliability are critical to long-lasting relationships and to the overall health of our industry.

This Project Specific EHS Plan outlines Gridworks' EHS processes, standards, and procedures for the //Project Name//

2.0 OVERVIEW

2.1 PURPOSE

This Project EHS Plan identifies and presents the requirements and execution strategies for the //Project Name//

2.2 APPLICATION

This Project EHS Plan applies to work activities and personnel under the control of Gridworks and its subcontractors. The senior-most Project Lead is responsible for the consistent implementation and success of this Project EHS Plan.

2.3 OBJECTIVES

The Project's objectives in implementing this Project EHS Plan are to:

- Provide requirements to execute Gridworks EHS Policy commitment to continually improving health and safety performance and how those requirements will be met.
- Require personal responsibility and accountability for the management of health and safety.
- Incorporate the highest recognized health and safety standards into engineering, design, and work processes implemented at all Company-managed workplaces.
- Adopt other recognized standards and relevant statutory provisions as the basis upon which Gridworks develops its high standards.
- Provide effective training, efficient communication, and continuous performance review.

2.4 ABOUT

This Project EHS Plan is written to comply with the U.S. Occupational Safety and Health (OSHA) standards.

This Project EHS Plan includes excerpts from and references to numerous regulations, codes, and standards. This Project EHS Plan does not state the requirements of the regulations, codes, and standards in their entirety; as such, they are incorporated by reference. Persons or organizations using this Project EHS Plan will familiarize themselves with appropriate regulations, codes, and standards.

In an unusual circumstance where an EHS requirement is not feasible for the situation or presents a greater risk to the worker, a written justification for an exception will be submitted for approval to the Project Management Team and the Director of EHS.

2.5 PROJECT DESCRIPTION

//Enter Project Description//

3.0 ADMINISTRATIVE

3.1 MANAGEMENT REVIEW

Senior Project Management will conduct an EHS Management Review, at least quarterly and more frequently if required.

The review will consider:

- EHS risks and opportunities
- How well the EHS policy and EHS Objectives and Targets are being met
- Trending of performance for both leading and lagging EHS indicators
- Identifying opportunities for continual EHS improvement
- Revisions to the Project's EHS requirements
- Review the adequacy of resources for maintaining an effective health and safety program

Decisions from the EHS Management Review will include:

- Required actions to achieve the objectives; and
- Continual improvement opportunities.

3.2 EHS STAFFING

Gridworks will provide a full-time EHS Lead to assist in implementing the Gridworks EHS Safety Culture and ensure compliance with client EHS requirements. The Project Lead will ensure that staffing resources are available to implement the Gridworks EHS program effectively.

The Project Lead will also ensure that subcontractors with more than 35 employees on-site also provide a full-time EHS representative.

3.3 ROLES AND RESPONSIBILITIES

Additional responsibilities of the roles identified within this section are described in relevant sections of this Project EHS Plan.

3.3.1 Project Manager

The Project Manager will:

- Provide resources to develop a site-specific Project EHS Plan that minimizes impacts to the environment and protects our employees, subcontractors, clients, communities, and others who could be affected by our activities

- Provide an environment that protects all personnel associated with the project and the general public
- Provide resources to support the Project EHS Plan
- Review proposals and approve the allocation of resources for practical and effective EHS initiatives
- Execute additional Mandatory Company Requirements specific to the Project Director as identified within this Project EHS Plan

3.3.2 Site Manager (Construction Manager)

The Site Manager will:

- Coordinate the development of effective EHS programs that minimize impacts to the environment and protect our employees, subcontractors, clients, communities, and others who could be affected by our activities
- Implement and provide overall direction and support of this Project EHS Plan by:
  - Providing adequate EHS resources, facilities, and initiatives
  - Holding supervision accountable for implementation and performance
  - Including personal EHS involvement and performance in performance appraisals
  - Encouraging the proactive involvement of all workers
  - Ensuring that orientations are presented by a member of management and EHS (or a designee)
  - Ensuring appropriate skills training is provided to workers and that they understand their EHS responsibilities
  - Using leading and lagging EHS indicators to improve performance
  - Expedite the final solution or outcome of recommendations that are identified in the EHS-related reviews

3.3.3 Supervision (Line Management)

Supervision will:

- Plan and direct the work following the Project EHS Plan.
- Possess a comprehensive knowledge of EHS rules pertaining to his/her job.
- Verify that each worker under his/her supervision has:
  - Received an initial safety orientation;
  - A working knowledge of the applicable safe work practices and understands of the rules and regulations; and
  - Access to the Project EHS Plan and additional work planning documentation.
- Consistently enforce EHS rules and regulations.

- Supervise the training of new workers, either personally or with the assistance of experienced craftsmen, until he/she demonstrates the ability to work safely and efficiently.
- Monitor workers' performance to ensure the use of safe work practices.
- Develop pre-task planning documentation that effectively analyzes work activity hazards and associated control measures
- Lead effective pre-task meetings that engage workers to participate
- Consult with the EHS Representative on EHS and incident management issues.
- Conduct scheduled and unscheduled assessments of the work areas.
- Investigate and report all incidents in their respective areas of responsibility.
- Apply appropriate disciplinary actions to address breaches of the Project EHS Plan.
- Conduct toolbox meetings.
- Be visible in the workplace and acknowledge proactive EHS performance.
- Take appropriate remedial action on substandard EHS items and maintain zero tolerance for unsafe acts.
- Promptly notify his/her direct Supervisor and the Project EHS representative concerning work areas where unique hazards exist and special assistance is required.
- Promptly report to his/her direct Supervision of all cases of workers who, in his/her opinion, are not qualified for the work to which they have been assigned or who engage in unsafe work practices.
- Periodically re-analyze work methods to establish necessary EHS work methods and to simplify job processes.
- Assist EHS in the preparation of departmental or project safe work practices.
- Be responsible for housekeeping in his/her department and for using and maintaining all personal protective devices, equipment, and safeguards.

3.3.4 Project EHS Lead

- Monitor and report on execution of the Project EHS Plan.
- Coordinate orientation inductions and EHS training.
- Verify that first-aid and emergency resources and procedures are in place.
- Verify that safety data sheets (SDSs) are maintained.
- Attend EHS Committee meetings and consult with the Project Lead(s) on EHS issues.
- Report all hazards to their Supervision or the Project Lead.
- Inform personnel in the area of Company EHS issues.
- Promote EHS education, awareness, and engagement.
- Conduct unscheduled and scheduled assessments of work areas.
- Participate in area assessments with area supervision regularly.
- Coordinate the EHS Committees and represent the work group.
- Coordinate appropriate orientation for personnel commencing employment.
- Coordinate EHS training for personnel as appropriate.
- Participate in investigations relating to EHS issues.
- Coordinate and participate in thorough investigations of all incidents and prepare reports as appropriate.

- Coordinate audits to eliminate conditions and work practices that are hazardous to the job.
- Review and monitor procedures.
- Encourage hazard identification and reporting by all project personnel.
- Arrange for new workers to read and sign the Employee EHS Responsibilities.

3.3.5 All Personnel

All Personnel will:

- Comply with and constructively participate in the EHS program; this involvement may include some aspects of planning, problem-solving, priority setting, training, and improving work practices.

- Work within competencies held.
- Immediately report injuries, incidents, near misses, and hazards to supervision.
- Inform supervision or management of any unsafe act or condition they observe.
- Provide ideas and suggestions to improve safety.
- Adhere to procedures to protect their safety, their fellow workers' safety, and the general public's safety.
- Analyze the work scope (conduct and or assist with JHAs and PTPs) to identify and assess hazards and to provide for the development of safe work methods.
- Comply with all safe working directions given in the workplace.
- Not misuse or damage any equipment.
- Wear all appropriate protective clothing and equipment.
- Keep the work area orderly and comply immediately with any lawful directive Gridworks or Client gives.
- Ensure that Daily toolbox meetings, PTP meetings (and signed by crews), Stretch and Flex activities are completed before starting any work activities

3.4 SUBCONTRACTOR SELECTION, ALIGNMENT, AND MANAGEMENT

Selecting subcontractors who align with Gridworks' and the client's EHS philosophy and culture provides a safer work environment and enhances project execution.

The Project Lead will ensure that Subcontractor EHS prequalifications are evaluated by an EHS Evaluator before awarding contracts.

Contractors will be evaluated for EHS qualifications using the Company's risk-based approach that considers recent injury/illness metrics, regulatory compliance, program elements, and other regionally relevant information. The contractor's qualifications will be evaluated by the EHS Evaluator using the EHS Prequalification Tool in accordance with Company Contractor Prequalification (3004-00) requirements. Results of the evaluation will be returned to the Subcontract Administrator for review with the Project Lead via the HSE Prequalification Tool

The EHS Project Lead will ensure alignment and consistency between this Project EHS Plan and the Project's Standard Contract Attachment 1 – Subcontractor EHS Requirements.

The Subcontracts team and the Project Manager will ensure the Project's Subcontractor EHS Requirements are included in the contracts.

The EHS Project Lead will review and approve or reject the EHS Plans of contractors who elect to use their equivalent programs.

The EHS Project Lead will conduct the EHS portion of the Subcontractor preconstruction/kick-off meeting.

The EHS Project Lead or a designee will accompany the Contractor on a site tour to review and confirm awareness of potential hazards following the premobilization/kick-off meeting.

The Project Lead, EHS Project Lead, and Subcontracts Administrator will enforce the EHS requirements and obligations of the contract and related documents.

The Project Lead and EHS Project Lead will monitor Contractor performance using assessments, observations, and leading/lagging indicators, as described in this Project EHS Plan.

The following table summarizes the evaluation criteria for injury and illness statistics:

TRIR:	
1.5 or less	*Satisfactory*
4.0 or less, greater than 1.5 8.0 or less, greater than 4.	*Satisfactory With Advisory Notice* *Satisfactory With Corrective Action Plan*
Greater than 8.0	*Unsatisfactory*
DART rate:	
1.0 or less	*Satisfactory*
2.0 or less, greater than 1.0	*Satisfactory With Advisory Notice*
5.0 or less, greater than 2.0	*Satisfactory With Corrective Action Plan*
Greater than 5.0	*Unsatisfactory*
EMR (or WCB):	
1.0 or less	*Satisfactory*
1.15 or less, greater than 1.0	*Satisfactory With Advisory Notice*
Greater than 1.15	*Satisfactory With Corrective Action Plan*

Contractors or subcontractors reporting a work-related fatality within the last three years should have, as a minimum, to be considered *Satisfactory*, either a self-imposed or Gridworks-mandated CAP to address the cause(s) of the incident. The Director of EHS, along with the VP of Project Execution and the client, will determine whether a contractor or subcontractor experiencing a fatality should be rated as *Satisfactory (with CAP)* or *Unsatisfactory* for EHS performance.

Before the start of Work, Subcontractor and all its Subcontractors shall submit the following to the Project Management Team for review and acceptance:

- Site Specific Safety Plan (submitted via Hammertech)

- Emergency Response Plans (Submitted via Hammertech)
- Job Hazard Analysis for the entire Scope of Work (Submitted via Hammertech)
- Records related to the designation of Competent Persons (Submitted via Hammertech)
- Certification in writing that all equipment to be used on the project site meets all applicable EHS regulations
- EHS Department Organizational Chart
- CV's of all candidates for EHS Positions

3.5 SUBSTANCE ABUSE PREVENTION AND SMOKING POLICY

Gridworks is firmly committed to ensuring the health, safety, and well-being of its employees, clients, and the public. Gridworks has established a strong commitment to maintain a drug and alcohol-free workforce. Our goal is to ensure that all employees, at all times, can perform their duties safely and efficiently.

3.5.1 Drug and Alcohol Policy

Gridworks prohibits the unlawful possession, use, or distribution of mood-altering drugs and alcohol by employees on Gridworks sites and/or their clients' work sites or in Company vehicles.

- Any illegal substance found in the workplace will be confiscated and turned over to the appropriate law enforcement agency immediately.
- Any employee reporting to work under the influence of, or in possession of, mood altering drugs or alcohol will have provided Gridworks with cause for immediate termination.

3.5.2 Chemical Screening

The Project will conduct post-offer/pre-employment, for cause/reasonable suspicion, random, and post-incident screenings. The Project may establish other types of testing based on contract requirements.
Drug/alcohol screenings and searches will be conducted with as much privacy and discretion as possible. Chemical screening procedures will maximize worker privacy and protect against sample adulteration. Direct observation is prohibited. Indirect observation is permitted only if the initial sample is outside the normal temperature range or if the laboratory identifies the sample as low specific gravity or low creatinine.

3.5.3 For Cause/ Reasonable Suspicion

Workers reasonably suspected of using or being under the influence of Illicit substances or alcohol as manifested through deteriorating job performance, uncharacteristic behavior, safety violations, mood swings, falling asleep, inability to respond to questions appropriately, the odor of alcohol on the breath or person, inappropriate or aggressive behavior, or other credible

evidence are subject to chemical and alcohol screening at the Project Lead's discretion. The worker may be suspended, with or without pay, pending receipt of the test results.

3.5.4 Post Incident Screening

After involvement in an incident resulting in, or requiring medical treatment for an injury, or damage to equipment or property, workers will be required to submit to Chemical Screening, including synthetic drugs and / or alcohol, in the following situations:

- When post-incident screening is required by a regulatory agency (such as the United States Department of Transportation) or worker's compensation program; OR
- When a reasonable possibility exists that drug and/or alcohol use may have caused or contributed to the incident.

3.5.5 SMOKING AND VAPING

Smoking and Vaping on on this project is not permitted as per client requirements

3.6 TRAINING AND ORIENTATION

The EHS Project EHS Lead will develop a matrix that identifies required training subjects by exposure groups, tracks individual workers' training completion, and identifies refresher intervals. Gridworks EHS Training Matrix may be used for this purpose.
Subcontractors may be included in the matrix or develop their own method for meeting the requirement. The EHS Project Lead or designee must audit contactor training and tracking methods to ensure compliance.
Supervision will verify that workers complete required training before assigning them related work tasks.
Supervision will receive copies of the matrix, or alternate methods will be used to identify individual worker training completion before work is assigned (such as qualification cards, hard hat stickers, etc..)
Workers will alert their Supervisor if they have not received adequate training for their assigned work.
Visitors to the site who are not expected to return and are not performing physical work tasks do not have to take site orientation. They must, however, be supervised 100% of the time during all site walks by someone having an Evelyn orientation sticker.

3.6.1 Orientation

Workers will receive orientation before conducting work tasks at the Project. All new project employees will complete an online registration and profile creation on the Hammertech App

(Gridworks EHS Management Software platform) followed by the Gridworks General Safety Orientation Video. Upon completion of the video, the employee will complete a test prior to obtaining approval to work onsite. Within the Hammertech app, the employee will sign to understand the orientation content and accept to meet the expectations. Information on employee participation shall
Upon arriving at the site, the EHS manager will confirm the employee's registration into Hammertech and verify the successful completion of the EHS test. The employee will then participate in the Site-Specific Orientation to review the site-specific rules, clients' expectations, and the project's Emergency Response Plan (refer to the Site-Specific Emergency Response Plan). All participants of the site specific orientation will sign the attendance roster for recordkeeping.
Upon completion of the Site Specific Safety orientation, employees will receive a sticker on their hardhat to serve as visible evidence in the field for having completed the orientation.
Visitors to the site who are not expected to return and are not performing physical work tasks do not have to take site orientation. However, they must be supervised 100% of the time during all site walks by someone with an Evelyn orientation sticker.

3.6.2 Competent/ Qualified Person Designation

Competent Persons will be capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to workers and will have authorization to take prompt corrective measures to eliminate them.
Qualified Persons will, by possessing a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrate their ability to solve or resolve problems relating to a given subject matter, the work, or the project.
The Project Lead will designate Competent Persons and Qualified Persons as required.
The Competent/Qualified Person Designation form documents individual designation(s).

Each employer shall complete the Competent/ Qualified Designation form, which will be uploaded to Hammertech for recordkeeping. Such document will be sent to all subcontractors attached to the Hammertech Welcome email.

Personnel responsible for directing work are expected to have extensive safety training, such as the 30-hour OSHA Construction training or equivalent. Other personnel performing construction duties on site are expected to at least have basic safety training, such as the OSHA 10-hour Construction Course or equivalent. Trade-specific functional equivalent training is acceptable.

3.6.3 Toolbox Meetings

Supervision will conduct documented weekly Toolbox Safety Meetings with their craft workers.
The EHS Project Lead will develop Weekly Toolbox Meeting content. Content should include:

- Review of compliance/management safety inspections conducted since the last safety meeting
- Review of violations to assist in the correction of hazards
- Evaluation of incident investigation conducted since the last safety meeting to determine if the cause of the unsafe acts or unsafe conditions involved were properly identified and corrected
- Review of incident/injury/illness experience
- Review of EHS communications
- Lessons learned from incidents and root causes
- Review of current job-specific JHAs
- Review of upcoming JHAs
- Review of specific job safety concerns
- Review of chemical SDS information
- Project-specific or plant-specific procedures
- Review of pertinent announcements, correspondence, notes from Supervisor meetings, and other topics specifically relating to the group

3.6.4 EHS Topic

The Meeting Moderator will begin meetings with five or more attendees with an EHS Topic. This includes office meetings and training.
EHS topics are designed to be covered in 3-5 minutes and are intended to help attendees focus on this core Company value. An EHS topic does not constitute a “safety meeting”.

3.7 WORKFORCE ENGAGEMENT

3.7.1 Leadership in Action

The Project will implement the Leadership in Action workforce engagement program.

The Leadership in Action Program aims to further engage workers and Supervisors in identifying and controlling hazards in the workplace to strengthen the on-site EHS culture. This is achieved by developing workers' awareness of risks, hazard communication skills, and teamwork to resolve hazardous acts and conditions.
Training on the program will be provided to the Project Management Team before mobilization to site. The program consists of weekly EHS walk-downs of the site by the

Project Management team and contractors leadership to identify hazards and situations that could possibly lead to a serios injury to an employee.

3.7.2 Hazard Reporting and Safe Work Observations

The Project Lead will ensure that Power-up Cards (hazard reporting cards) are available to all Project personnel by placing them in the work areas where they can be easily accessible.
Supervisory and Management personnel will have the ability to complete field observations via the Hammertech System mobile app.
Supervision will ensure follow-up actions from Power Up Cards and observations completed via the HammerTech app.
Workers will use Power up Cards to document and notify management of unplanned events, unsafe conditions, and unsafe behaviors.
Workers will document hazards and near misses using the Hazard Reporting Card or by discussing them with their supervisor and including the issue during the post-Pre Task Plan (PTP) meetings.
Workers may provide their names on the cards to receive a response or complete them anonymously.

3.7.3 EHS Committee

The Project Lead will establish an EHS Committee and appoint a workforce representative.
Project EHS and Project Management will establish an EHS committee and develop the committee's charter.
The Project EHS Committee will include the following:

- Project Lead (chairperson)
- EHS Project Lead
- Project craft worker representatives
- Contractor management nominees
- Contractor craft worker representatives

The Project Lead and EHS Project Lead will canvas for a worker EHS representative(s). The representative(s) will be given sufficient time away from their roles to meet and communicate with the workforce on EHS matters separate from management.
The Project EHS Committee will meet at a minimum of monthly.
Examples of Project EHS Committee functions include:

- Monitor leading and lagging indicators of Project EHS performance and identify trends.
- Develop improvement plans to prevent work-related injuries, illnesses, and environmental impacts.
- Consider measures of training and promotion of EHS.
- Review standards, rules, and procedures relating to EHS to be implemented at the workplace and suggest enhancements.
- Review work-related injuries, illnesses, and environmental incidents and make recommendations to prevent recurrence.
- Review assessment and audit results and recommend correcting unsatisfactory performance levels.
- Initiate programs to raise and maintain interest in the workplace EHS program.

- Maintain records of meetings, including any recommendations.

3.7.4 Resolving EHS Concerns and Issues

All workers and Contractor personnel will be allowed to voice concerns and issues without fear of reprisal.
Personal "stop work authority" is granted to and implemented as required by Company workers and supported by all levels of supervision and management. Contractor workers have stop work authority in imminent danger unless their employer grants them full stop work authority.
Workers may contact Project EHS at any time to discuss EHS concerns. Such concerns may be provided orally or in writing using a Hazard Reporting Card. Workers may request confidentiality or anonymity, which will be honored.
Personal stop work authority will be included in orientation.

3.8 STOP WORK AUTHORITY

Workers have Stop Work Authority to halt a task or operation when a hazard, unsafe act, unsafe condition, or concerns/questions related to the control of EHS risk(s) exist, such as:

- Misunderstanding of the plan
- Concern with the plan
- Change in plan

Workers will resume work after the issues and concerns about an EHS-related work stoppage have been adequately addressed.

3.8.1 Stop Work Process

Workers will use their Stop Work Authority when warranted, support the stop-work actions of others, and properly report all stop-work actions.

- When a person chooses to exercise their authority to stop work, the following steps should be followed:
- Immediately notify the affected person(s) who may be in an imminent danger situation
- Notify the Supervisor as soon as possible
    - If the affected person(s) are not at immediate risk, the stop-work action should be coordinated through the Supervisor
- The Supervisor (or other initiator) will positively stop work actions by providing a brief introduction and stating the intent to stop work and the reason for doing so
    - It may be necessary to remove person(s) from the area, stabilize the situation, and make the area as safe as possible
- The involved workers will discuss and gain agreement on the stop-work issue

- After careful consideration, a determination will be made either to proceed as-is or to take action to resolve the issue to all affected persons' satisfaction before resuming work
- If the issue cannot be resolved immediately, work must be suspended until proper resolution is achieved
    - The Project Lead will make the final determination when opinions differ regarding the validity of the stop work issue or adequacy of the resolution actions,
- Positive feedback will be given to the initiator and affected workers regarding the resolution of the stop-work issue

Site Leadership will:

- Create a culture where Stop Work Authority is exercised freely
- Establish a clear expectation to exercise a stop-work action
- Resolve stop work conflicts when they arise
- Hold those accountable who choose not to comply with established Stop Work Authority expectations and requirements
-

Supervision will create a culture where:

- Stop Work Authority is exercised freely
- Requests for stop work actions to resolve issues before operations resume are honored
- Proactive participation is recognized
- All stop work actions are properly reported with required follow-up completed

Retribution or intimidation directed at an individual or Company for exercising their Stop Work Authority will not be tolerated and is subject to disciplinary action. Personnel will not be disciplined for reporting unsafe conditions or work practices.
Actions taken in response to someone exercising their Stop Work Authority will be consistent with the Resolving EHS Concerns and Issues requirements of this Project EHS Plan.

Supervision will review reports of stop-work actions to:

- Measure participation
- Determine the quality of actions and follow-up
- Trend common issues and identify opportunities for improvement
- Facilitate sharing of learning
- Support recognition programs for positive behavior

In support of Supervision, EHS is responsible for monitoring compliance with the requirements of this program, maintenance of associated documents, processes, and training materials, identification of trends, and sharing of lessons learned.

3.9 DISCIPLINARY PROCESS

The disciplinary process is in place to consistently provide management and supervision with a uniform application of disciplinary action for EHS violations at the Project. All disciplinary actions must comply with Gridworks Human Resource policies.
The Project Lead will take immediate corrective action when safe work practices are not adhered to prevent injuries to workers or damage to property or the environment.
An investigation will be conducted before disciplinary action for an EHS violation is taken. The Project Lead will include hazard elimination and disciplinary action up to and including termination in response to EHS infractions.
The investigation results need to confirm that the Project EHS Plan and EHS Procedures have not failed the worker and that the worker intended and knowingly violated safe operating procedures before administering disciplinary action. Before administering disciplinary action, the investigation will provide evidence that the individual had:

- Sufficient supervision
- Suitable training
- Adequate tools for the role
- Sufficient work planning was conducted

If these aspects cannot be evidenced, then the Project EHS Plan will be revisited for improvement and no disciplinary action will be taken against the worker.

3.9.1 Discipline

The EHS Project Lead may recommend the type of discipline to be applied but will not administer the discipline themselves. If satisfactory results are not achieved after working through the Project Lead, the EHS Project Lead may contact the Gridworks Director of Safety and Director of Projects.

3.10 INCIDENT REPORTING AND INVESTIGATION

All EHS incidents (hereafter referred to as “incidents”) will be reported to the Gridworks Project Management Team, which will, in turn, report them to the client's on-site representative and EHS lead. Workers have the right and responsibility to report incidents as soon as practicable after becoming aware of them.
Workers will report incidents to one or more in the following order of preference:

- Immediate Supervision
- An EHS Representative
- Supervisor's Supervisor (and up the reporting structure if necessary)
- HR representative

The Company will not retaliate against workers for reporting an injury, illness, or other incident or raising an EHS concern. Gridworks prohibits any such retaliation, which includes taking

disciplinary action against an individual who has reported an incident without evidence of a specific violation (refer to Disciplinary Process).

3.10.1 Incident Severity

The Project EHS Lead, in conjunction with the company Director of EHS, will determine the actual and potential severity of each incident.
The actual and potential severity of incidents, including near misses, will be determined in accordance with the figure below:

SEVERITY LEVEL		PEOPLE	ENVIRONMENT / COMMUNITY	EQUIPMENT / PROPERTY
High Severity	4	Fatality(ies)	Long-term (multi-year) impacts to air, surface/groundwater, or soil; OR Legal liability for related consequences (such as remediation); OR Widespread areas, including offsite areas or community affected; OR Adverse publicity/media coverage	Extensive losses of high-value equipment/property OR Losses exceeding $1,000,000; OR Major unplanned impact on project budget and schedule
	3	Long-term, life-altering injury or illness resulting in permanent total or partial disability *Examples: amputation including bone, severe disfigurement, paralysis, loss of limb/organ/vision/hearing*	Lasting up to one year impacts to air, surface/groundwater, or soil; OR Offsite area/community affected; OR Notice of violation, citation, or fine from regulatory authority; OR Likely adverse publicity/media coverage	Losses of equipment that cannot be readily replaced OR Losses exceeding $100,000; OR Significant unplanned impact on project budget and schedule
2		Injury or illness that requires medical treatment or results in temporary disability or loss of function *Examples: deep laceration, object embedded in the eye, bone fracture, concussion, dislocation, an injury requiring surgery*	Temporary, up to one month, impacts to air, surface/groundwater, or soil limited to the project site; OR Breach of regulatory requirement or limit; OR Events that are reportable to regulatory authorities OR Potential adverse publicity/media coverage	Loss of equipment that can be readily replaced; OR Losses exceeding $10,000; OR Minor impact on project budget
1		Injury or illness requiring first aid treatment only. *Examples: minor cuts, bruises, sprains, strains, abrasions, irritation, inflammation, object in eye removed by flushing*	No direct impact to air, surface/groundwater, or soil; OR Effects restricted within buildings or containment structures; AND No adverse publicity / media coverage	No impact on equipment functionality. Minor, cosmetic damage; OR Repair costs easily covered by normal project operating budget
0		No impact	No impact	No impact

3.10.2 Incident Response

The Project Lead (Project Manager or Site Manager) will ensure that incidents are responded to according to the requirements of this Project EHS Plan.
Incident response activities will be managed based on incident severity. Response activities will be based on the actual and potential severity, as understood based on the information available at the time. If, during the investigation, it is determined that the incident was more severe, additional response activities will be taken accordingly.

3.10.3 Initial Notification

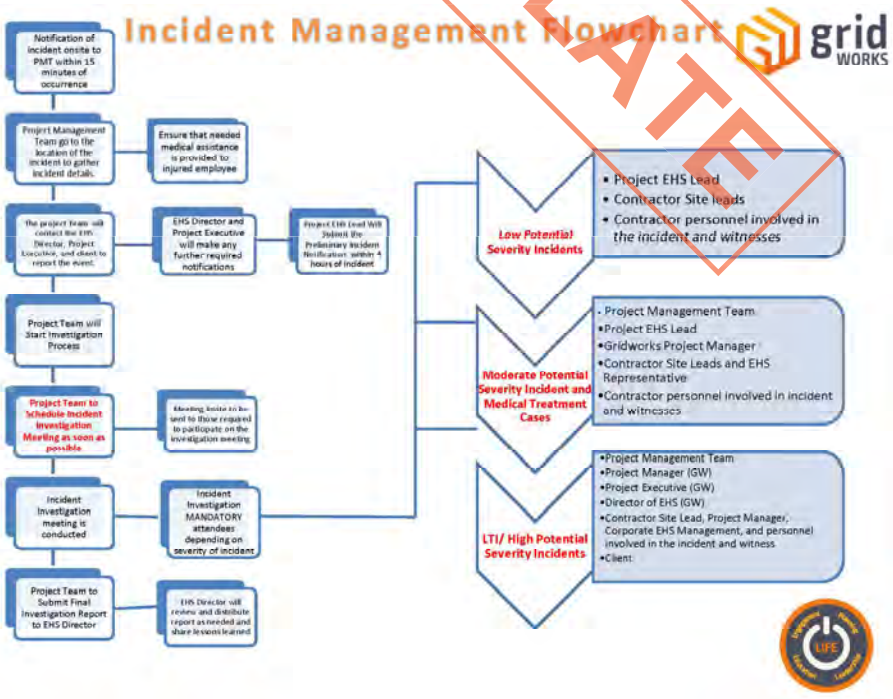
The Project EHS Lead will initiate Initial Notification activities per the requirements of this Project's EHS Plan.
Initial notification will be provided via Gridworks Preliminary Incident Notification form, where the event's basic details are summarized. Upon completion of the document, it shall be sent via email to safetyincidents@gridworks.com, the Project Management Team, and the client EHS representative.

3.10.4 Investigation

The Project EHS Lead will initiate investigations as soon as reasonably practical following an incident and document investigation findings using Gridworks Incident Reporting and Investigation Forms.
Corrective and preventive actions stemming from incident investigations will be tracked to completion. Corrective action plans will include at minimum:

- A description of the action to be executed
- The party responsible for executing the action
- The date the action is due

The following Incident Investigation Flowchart is to be used as a reference.



3.10.5 Incident Investigation Summary

An incident investigation summary will be prepared in conjunction with the Law Department using the Incident Investigation Summary form and reviewed in a meeting with the Chief Executive Officer.

3.10.6 EHS Incident Lessons Learned

EHS Incident Lessons Learned are used to communicate significant incidents across the organization.
EHS Incident Alerts will be developed as follows:

- Project EHS will use the EHS Lessons Learned Template to develop a first draft for submission to the Director of Safety
- The Director of Safety will review and revise as necessary the EHS Lessons Learned document and submit to the Legal Department for review
- Corporate EHS will coordinate to have it uploaded to the EHS Lessons Learned Library and distributed to all Gridworks Project Management Teams.

EHS Lessons Learned will include basic facts about the incident/near miss, a description, the sequence of events, contributing factors identified by the incident investigation, and actions recommended to prevent recurrence. Sensitive information, including the names of individuals involved or impacted by the incident, personal medical information, disciplinary actions, Client and Contractor names/logos, etc. will be omitted.

3.11 EMERGENCY PREPAREDNESS AND RESPONSE

The EHS Project Lead will develop a written Emergency Response Plan (ERP) that includes signals and alarms, communications, actions, responsibilities, evacuation routes, assembly points, and personnel accounting.
The EHS Project Lead will consider existing emergency plans (such as client, owner, other contractors on the Project, etc.) throughout the lifecycle of the ERP. Adoption of, and/or coverage under, a client or another Contractor's ERP is acceptable, provided the following criteria are met:

- The ERP covers emergencies/conditions that are reasonably anticipated based on the project scope;
- The "Owner" of the ERP agrees;
- Workers are trained in the ERP; and
- Workers participate in drills, including post-drill analysis and feedback.

The Project Lead will designate and train the appropriate number of workers to assist in the safe and orderly emergency evacuation of workers before implementing the ERP.

Personnel will participate in drills, including post-drill analysis and feedback.
The EHS Project Lead will distribute pertinent information about emergency signals, evacuation routes, assembly points, and alarms using the most effective methods for the Project (such as wallet cards, signs, orientations, bulletin boards, or worker meetings).
The EHS Project Lead will ensure that emergency-related events are reported, investigated, and documented in accordance with the Incident Reporting and Investigation requirements.
The Project Lead will monitor compliance with the requirements of the ERP.
Workers will be informed of the exact location of eyewash stations.

3.12 INJURY AND ILLNESS MANAGEMENT

The Injury and Illness Management requirements outline the health risk management controls that will be employed to mitigate potential health impacts during construction activities.

These requirements are designed to integrate appropriate health risk controls into Project construction activities. They provide an outline of the specific responsibilities and documentation to be maintained to facilitate internal and external auditing.

The Project Lead will ensure that first-aid supplies are approved by a consulting physician, medical providers, or recognized standard.

The Project Lead will ensure that first-aid services are available and that a qualified first-aid responder is available for each shift and at each required location.

The Project Lead will ensure that critical incident management processes are executed as needed and that incident response timelines are followed.

The Project Lead will ensure personnel case management is in place and that a Return-to-Work Plan is developed for those unable to return to work for five days or more.

The Project Lead will ensure demobilization, defusing, and debriefing activities are followed.

The Project Lead will ensure proper permissions are obtained relative to injured/ill personnel.

The EHS Project Lead will liaise with healthcare providers and insurance Company representatives.

The Project Lead will ensure medical treatment management is followed.

The EHS Project Lead will complete necessary reporting, documentation, and reporting to management in accordance with Incident Reporting and Investigation.

The EHS Project Lead will hold an alignment session with insurance providers' claims representatives during the pre-mobilization stage or when the Project undergoes a management change.

The Project Lead will ensure that a complete investigation of all work-related injuries/illnesses is conducted as soon as they are reported to the Company, as required by Incident Reporting and Investigation.
The Project EHS Lead will make ensure that all on site workers understand that if an ambulance is needed, they shall immediately call 911. All members onsite shall understand that they have this right and they shall use is as needed. In the event that 911 is contgacted by personnel on the field, they shall also know that they need to inform Gridworks Project Management Team immediately.

3.12.1 Medical Services

As Per Emergency Response Plan

3.12.2 First Aid

When First-aid services are unavailable (such as off-shift, overtime, remote locations, etc.), at least one person who holds a current first-aid certificate (validated by the record at training services) will be assigned to provide emergency first aid for all shifts and at each required location.
A valid first-aid certificate may be acquired through the site training organization or from recognized agencies such as the American Red Cross.
First-aid supplies, including Bloodborne Pathogen (BBP) kits, will be readily accessible to the individual designated to provide emergency medical response. These can be found at the Project Management Team Environmental, Health, and Safety Office. Additionally firt aid supplies will be readily available at all project offices.
All project pick up trucks must also be equipped with first aid kits in addition to fire extinguishers.
First-aid kits will be promptly restocked when depleted.
A documented monthly inspection will be performed to ensure the integrity of the first-aid supplies.
Automated External Defibrillator (AED) will also be available onsite.

3.12.3 Case Management

When an injury requires off-site medical treatment, the Gridworks EHS Project Lead must be notified and meet the worker and Supervisor at the offsite healthcare provider location. Gridworks EHS Representative will provide case management services for Company personnel. Similar case management will be available for Subcontractor workers to the extent possible.

Responsibilities

Managers/Supervisors Responsibilities

- Notify Project EHS and arrange to meet at the healthcare facility when a worker has reported an injury or illness.
- Accompany the injured/ill worker to the healthcare facility or local hospital emergency room whenever the worker is being assessed due to an occupational injury/illness.
- Follow up with the injured/ill worker to ensure reassessments are completed when scheduled or earlier if appropriate.
- If a worker seeks offsite medical care, review the worker's work release from the offsite healthcare provider before allowing the worker to return to work.
- If a worker notifies you that he/she cannot report to work because of a work-related injury or illness, arrange to meet the worker at the designated healthcare facility.
- In conjunction with healthcare providers, request additional medical assessment or diagnosis of occupational injuries/illnesses, if required.

Project EHS Responsibilities

- Meet the injured/ill worker and their Supervisor at the offsite healthcare.
- Upon arrival, evaluate the situation and decide if the Supervisor may leave.
- Interface with the injured/ill worker and the healthcare provider regarding return-to-work options.
- Communicate outcomes of incidents and changes to the Gridworks Director of EHS
- Maintain and manage incident data retrieval and reporting.
- Administer the workers' compensation program.

Return-To-Work

Consistent with medical advice, employers must assist workers in remaining in the workplace or returning to work as soon as possible if injured or ill.
Specifically, the requirements usually include, but are not limited to, the following:

- Provided it is safe and practicable to do so, injured or ill workers will be returned to work in the shortest possible time.
- If the shortest time to return to work is not possible, the worker will be returned to suitable alternative or selected duties that do not jeopardize their well-being or the well-being of others.
- Managers and Supervisors will assist their employers in meeting responsibilities, including, where practical, immediately reporting all injuries/illnesses to their immediate Supervisor.
- The Project Lead and each Contractor will appoint a "Return-to-Work Coordinator" who will act as a liaison officer in all rehabilitation cases.

Liaison with Offsite Healthcare Providers

Initial contact with healthcare providers for rehabilitation or return-to-work plans may be through the Supervisor. This contact is to fully inform the healthcare provider of the project rehabilitation and return-to-work policy and the availability of alternate/selected duties for injured/ill workers.
Ongoing liaison for rehabilitation/return-to-work plans will be through the appointed Return-to-Work Coordinator. An injured or ill worker will be offered alternative/selected duties to keep the worker in the workplace.
Each Subcontractor must contact the project Return-to-Work Coordinator when commencing work to explain the Contractor's rehabilitation/return-to-work program and the availability of alternative duties for their workers.

Return-to-Work Plan

The employer and the injured/ill worker will jointly prepare the return-to-work plan in cooperation with the treating professional.
The Project Lead or designee will approve the return-to-work plan.
The following details must be included in a return-to-work plan for injured/ill workers:

- Project name
- Project address
- Name, address, telephone number, date of birth, and occupation of the injured/ill worker and the date of injury/illness
- Name of Return-to-Work Coordinator
- Name, address, telephone, and fax number of the primary offsite healthcare provider
- Completed Injured Employee Job Description
- An Offer of Suitable Employment at the workplace if the worker cannot perform pre-injury/illness employment
- Estimated date when the worker will be fit to return to work and the hours of work
- Date the return-to-work schedule will be reviewed
- Details of medical restrictions on capacity to return to work
- Rehabilitation services necessary to facilitate the worker's return to, or maintenance at, work following the injury/illness
- Details of other assistance or healthcare services that will be provided to facilitate the worker's return to, or maintenance at, work following the injury/illness
- Details of actions taken to reduce the risk of further injury/illness once the worker has returned to suitable work following the injury/illness
- Signatures of the injured/ill worker and the Return-to-Work Coordinator
- Return-to-work plans should be scheduled for review approximately every 2 weeks after the commencement of the plan.

3.13 PRE-TASK PLANNING AND RISK ANALYSIS

Pre-task planning and risk analysis define structured methods of identifying hazards and assessing risk and require developing work procedures to mitigate those risks.

The project will adopt a “whole life” approach to pre-task planning for EHS from the commencement of the Project through commissioning and handover to the Client. All workers are responsible for hazard and risk identification and management.

Key Company workers (such as construction supervision, craft, and EHS), Clients, and Contractors (if contract work) should be involved in the pre-task planning process. Involvement may include pre-task walkthroughs, JHA development participation, or input/changes recognized during pre-task meetings.

The Project Lead will ensure that the project:

- Uses a series of hazard studies to identify, analyze, and manage areas of risk or hazard
- Assesses the risks that identified hazards pose to workers and subsequently establishes a measure of risk and determines a priority for corrective action
- Monitors the identified control measures regularly to confirm compliance

Engineering will provide technical support or pre-task planning assistance to ensure compliance with codes, standards, and regulations.

Supervision will:

- Ensure that required training and permits are completed for applicable items on the known or potential hazards list, and document competency and/or qualification
- Ensure that current pre-task planning documents are at the worksite and updated as conditions and workforce change
- Compile information necessary to complete the pre-task planning process

The EHS Project Lead will:

- Provide safety and health-related program guidance for pre-task planning.
- Ensure a pre-task walkthrough of the Project has been completed by Supervision before the start of work.
- Review and evaluate hazardous material and/or hazardous processes that create potential worker exposure. Processes may include, but are not limited to:
    - Welding or cutting
    - Confined spaces
    - Coating application/removal
    - Sandblasting
    - Chemical use

3.13.1 Hazard Identification

The Project will conduct assessments to provide a system for recognizing hazardous conditions and correcting them. The data collected while performing assessments will be used to identify hazards and barriers to working safely and in an environmentally protective manner and

address them. The data will also be tracked as a proactive measure of acceptable EHS behavior on the site. Reports and safe work observation information will be shared with workers at Toolbox safety meetings.

3.13.2 Assessment

The risk assessment step is the part of the process that assesses the probability (likelihood) and consequences (severity) of hazards that have been identified. Projects will estimate the probability and consequences of each hazard and allocate it as a priority for corrective action. Risk assessment should consider:

- The chances (probability) of an incident happening;
- If an incident does happen, the chances that someone will be hurt and
- The extent of equipment or environmental damage and how severe it would be.

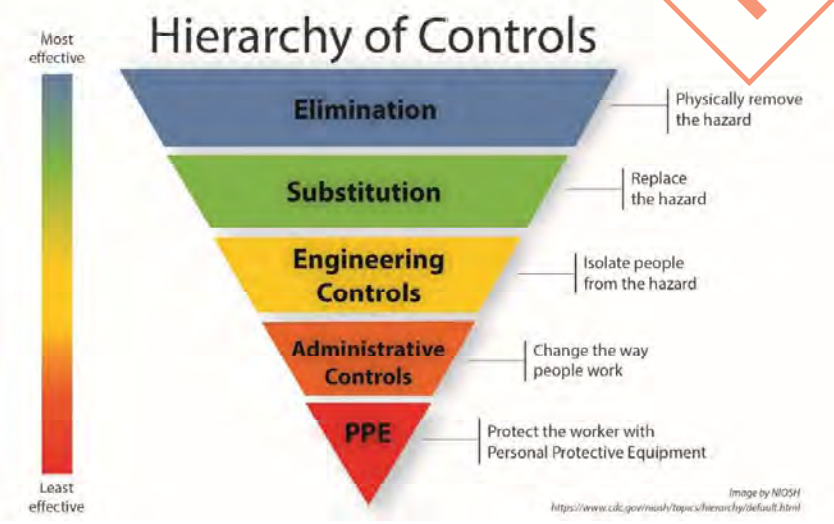
The risk level depends on the exposure to the hazard and the probability and consequences of an event occurring.

3.13.3 Control

Control is the stage in the process of determining and implementing appropriate measures to control risk.

Hierarchy of Controls

Having identified the potential hazards, the Project will further identify solutions to those hazards. Refer to the figure below for preferred hierarchy of controls, starting with the most preferred (Elimination) to the least preferred (PPE).



Evaluation

The Project will monitor the effectiveness of introduced controls to confirm that the previously identified risk(s) are being reduced. Evaluation may involve repeating the process of hazard identification, risk assessment, and risk control to verify that all risks to health and safety from a particular hazard have been controlled as far as is practicable; however, this depends on the hazard, the nature of the assessed risks, and on the control measures used.
Where the evaluations of risk control measures reveal some remaining risk, the process continues until risk is minimized as far as practicable.

Continuous Hazard Identification

Audits and assessments will monitor the pre-task planning process to verify that the process is working effectively, analyses are modified as necessary, hazards are being mitigated, and control measures are appropriate and implemented.

3.13.4 Job Hazard Analysis

The JHA is a process that identifies hazards associated with each step of a job and develops solutions for each hazard that will either eliminate or control the risk. The project will apply the JHA process to a project work scope before EHS procedures are developed.
The Project Lead will ensure that a comprehensive Jo Hazard Analysis (JHA), including the Risk Analysis portion, is conducted for each activity involving a High-Risk Operation and for each activity with high potential severity, history of incident occurrence, or non-routine activities. JHA development should also be considered when workers raise concerns about a job.
Supervision will use the JHA to identify known or potential environmental or otherwise hazards related to a scope of work.
The supervisor responsible for the work is ultimately responsible for developing the JHA, but more than one person will perform the JHA to provide a greater breadth of technical competence. There is not an optimum number of persons required to conduct a JHA; however, fewer rather than more are preferred. Ideally, the JHA Team will include:

- Supervision
- Worker(s) experienced in the task
- Other workers who will be performing the work
- Specialists (such as EHS representatives, engineers, and industrial hygienists) as required

Review

The Site or Construction Manager will review and approve the JHA before the start of work when hazards identified in the JHA process pose a high or very high residual risk (after control measures are identified).
The EHS Project Lead will review and approve JHAs after the documents have been signed by appropriate supervision.

Another EHS representative not involved in preparing the documents should review and approve them; a review with recommendations to change these documents is not considered involvement in preparation.
Workers will sign the JHA to indicate that they understand and will comply with the JHA.

3.13.5 Pre-Task Plan

The Pre-Task Plan (PTP) is the process of identifying and communicating to each worker the task steps to be completed, the hazards and risks associated with the task, and the safe work practices to be applied to complete the task safely and in an environmentally acceptable manner.
Supervision conducts the PTP process with workers daily, before each new work assignment begins, when conditions change, and when a worker arrives late to ensure that the contents of the pre-task planning document(s) are communicated and discussed with affected workers before entering the work site or initiating work.

The PTP process includes the following steps:

- Foreman receives the task assignment
- Foreman develops the PTP with the task crew during the pre-task meeting, which includes:
    - Overview of general task information
    - Identification of emergency procedures
    - Identification of:
        - High Risk Operations relevant to the task
        - Inspections required as related to the task (such as rigging or equipment)
        - Permits required before beginning the task (such as hot work or confined space entry)
        - Additional control plans that may be required
        - Other required measures (such as barricades, signs, tags, or rescue plans)

    - Description of the specific task steps and associated hazards and controls
    - Determination of the line of fire hazards and the most effective prevention controls associated with those hazards
    - Determination of required PPE
    - Assignment of competencies required for the task
    - Acknowledgement by each crew member that they have participated in the day's PTP
        - If additional crew members are assigned to the task, the Foreman will review the PTP with those workers, and their signatures will be added to the PTP.

Supervision will provide the required PPE and other equipment to complete the work task safely.

Management PTP Participation

The Project Lead will validate the completion of the PTP process daily and institute a process to verify quality.
Management will complete the Management PTP Participation of the PTP if they participate in the PTP or verify the work is being conducted in accordance with the PTP.

3.14 PERMIT TO WORK

A Permit to Work (PTW) is issued before starting work to verify that adequate planning has been completed to conduct the work safely.

The following activities require an activity-specific permit even if the permit-to-work process is not used:

- Confined space
- Energized electrical work
- Welding, cutting, burning (hot work)
- Critical lift
- Access to high voltage areas (such as substations and yards)
- Working near overhead/adjacent power lines
- Excavations

3.15 ASSESMENTS AND AUDITS

A key element to the success of an EHS program is ongoing assessment and audit. EHS monitoring will be conducted by the Project to ensure that Gridworks EHS requirements are properly executed, and to verify compliance with local regulatory requirements.
EHS monitoring by Corporate EHS may be conducted, without notice at the Project regardless of apparent success or failure as reflected in the analysis of required EHS reports.

3.15.1 Weekly Assessment

Supervision (Foremen, General Foremen, Superintendents, Site or Construction Manager, and other appropriate field support staff) and the Project Lead will conduct EHS assessments on a weekly basis. Where practical, a minimum of two people will participate in each assessment.

The Project Lead will develop a weekly assessment schedule. The schedule will designate individuals performing the assessments and the areas and/or processes to be assessed. The EHS Project Lead will maintain the weekly assessment schedule and track participation.

Supervisory Assessments: The Project Lead will make provision for Supervision to conduct one EHS assessment per week and an additional assessment per 40 craft workers.

Site Leadership Assessments: The Project Lead will conduct or participate in at least one weekly EHS assessment.

Supervision will use a standard format to execute, document, and score the assessment.
Each participant will sign the completed assessment and provide it to the Project Lead within 24 hours of completing it.
The Project Lead and EHS Project Lead will develop a tracking system to record the status of corrective actions.
The Project Lead will promptly investigate all areas where low assessment scores have been noted, take the necessary corrective action, and address all safety-related infractions and recommendations.
The Project Lead will ensure that the results of assessments are communicated to workers via the scheduled Toolbox Meetings together with the results of remedial actions taken.

3.15.2 Executive Management Team Member EHS Site Tours

The Project Lead will provide and assist visiting Executive Management Team Members with performing a EHS Site Tour.

3.15.3 Corporate Audits

Gridworks Corporate Director of EHS (or his delegate) will perform at least one Corporate EHS Audit for the project's life. Additional Audits could be performed at the request of the Project Management Team, the Project Executive, or the client, or when the project has suffered a concerning amount of incidents and injuries.

The assigned auditor will contact the Project Lead to schedule the audit date, coordinate the opening conference, and arrange site access for the audit team.
If document reviews are part of the audit, and if those documents can be provided before the audit, this notification will also request copies and/or electronic access to those documents.
The opening conference will be conducted on day one. The opening conference aims to introduce the auditors and confirm the purpose, scope, and schedule for the audit.
Typical audit activities include reviewing documentation, the team's observation of activities in the field, and interviews with project workers.

At the completion of audit activities, the audit team will compile notes to review with Project Management during a closing conference, which will be the last formal activity of the audit. Attendees include relevant project workers, the audit team, and those interviewed, as appropriate. The purpose of the meeting is to allow the audit team to present a synopsis of the audit findings.

3.15.4 Regulatory EHS Inspections Performed by Outside Agencies

The Project Lead, the EHS Project Lead, and the Client will be notified when an outside regulatory compliance officer (RCO) arrives at the Project. In addition, the following Company representatives will be notified:

- Gridworks Director Of Safety
- Gridworks Director of Projects

The Project Lead (or designee) and the EHS Project Lead will be the primary participants and the primary points of contact for regulatory inspections. The Project Lead will designate two alternates (in the absence of the primaries) to participate in the regulatory inspection.

By validating credentials, The highest-ranking management official will determine whether the individual is a bonafide RCO before he/she allows them to enter or inspect the premises. An employer will not abuse this right to delay the inspection entry; however, the inspector may be asked to wait a few minutes while the highest available management official of Gridworks or the Client is notified.
In the event that another person or persons accompany the RCO, the employer may also examine their credentials to determine whether they are appropriate regulatory representatives.

RCO(s) are typically authorized by agencies to perform the following:

- Upon presentation and verification of credentials, enter any work area without delay, at any reasonable time, and without advance notice.
- Inspect the place and conditions of employment, equipment, machinery, devices, and the processes or methods being used.
- Check recordkeeping procedures and investigate incidents.
- Take photographs and collect samples or evidence.
- Confer privately with workers of their choice concerning conditions or procedures. Review their findings with the designated management representatives.
- Issue citations resulting from the inspection. Such notice will be submitted in writing following completion of the inspection.
- Reenter the premises to determine that correction of violations has been made within the time established.

3.16 EHS PERFORMANCE

Performance objectives and targets are developed annually by Gridworks and adopted as a minimum by the Project. The EHS Objectives and Targets are issued annually detailing the corporate objectives and targets, including leading and lagging indicators.

3.16.1 Objectives and Targets

The Project Lead will incorporate the Gridworks EHS Objectives and Targets as a minimum and develop additional site-specific objectives and targets based on their needs, environmental conditions and performance.

3.16.2 Leading Indicators

The Project Lead includes the following core leading indicators:

- EHS Audits conducted by Company EHS
- EHS Training Completion
- Supervisory Participation in EHS Weekly Assessments (refer to Weekly Assessments)
- Site Leadership Participation in EHS Weekly Assessments (refer to Weekly Assessments)
- Potential Severity of Incidents (refer to Potential Severity)

3.16.3 Lagging Indicators

Incident data will be tracked and analyzed to measure and improve performance.

Incidence rates will be calculated for all operations and used as indicators of EHS performance.

The Project Lead includes the following core lagging indicators include:

- Total recordable case incidence rate (TCIR)
- Days away, restricted and transferred case incidence rate (DART)
- High potential severity incidence rate (HPSIR)
- Regulatory Infractions (violations, citations, penalties, etc.)

Incident data will be analyzed periodically to identify trends and inform future incident prevention efforts as part of office/project and overall Company continual improvement processes.

Analysis will include consideration of the potential severity of incidents and will not be based solely upon injury/illness recordkeeping classifications.

3.17 PRE-COMMISSIONING AND COMMISSIONING

The pre-commissioning and commissioning requirements are intended to prevent unexpected energization, startup, and uncontrolled energy releases that could cause injury to persons and/or damage to equipment. The site construction and commissioning teams are ultimately responsible for implementing the requirements for systems and equipment under their respective jurisdictional control. The requirements provide centralized control over LOTOs to ensure personnel safety at all levels.

3.17.1 Requirements

To undertake any work in a module or area during any period of the commissioning phase (pre-, cold, or hot), a specific PTW (refer to the Permit to Work requirements) will be developed and approved that covers the management of the various associated hazards. This process checks that the responsible area Supervisor, the Project Lead, or the superintendent is always fully aware of those entering his/her area of responsibility and all work being undertaken.

A 24-hour notice will be provided to appropriate workers before services are live for pre-commissioning and commissioning purposes.

All low-voltage systems will be regarded as live at all times unless an authorized person proves otherwise.

The commissioning manager will establish and maintain a safe work environment throughout the execution and all project phases.

The Commissioning Manager will report to the Project Lead for organizational requirements.

3.17.2 Ownership Identification of Modules and Systems

The four distinct phases to the completion of a project are as follows:

- Construction Phase
- Commissioning Home Office Planning
- Pre-Commissioning (Cold/No Load)
- Commissioning (Hot/Load) Phase

Construction Phase

During the construction phase, there is no specific ownership identification of any module.

Commissioning Phase

Permit to Work

It will be noted that work activities that would appear to introduce no new hazard on their own may introduce a higher risk into the work area and adjacent areas. Therefore, it is essential to view the issue of a Permit to Work in relation to all other work being undertaken in the immediate work area and those remote areas likely to be affected.
Once the construction Contractor has completed the installation of an item of equipment or system, the Project Lead will be notified that the equipment is available for pre-commissioning. Ownership of the equipment or system will be transferred to the Commissioning Manager.

Hazardous Energy Control
A Danger – Do Not Operate Tag (Controlling Organization) and lock will be used to protect workers.
Involved workers will affix their individual Danger-Authorized Worker Tag.
Only the worker can remove his/her Danger Tag/lock.

3.17.3 Identification and Notification of Live Services

Identification
Hazardous materials services will be identified in accordance with the applicable standards.

Additionally, all services including those mentioned above when energized/livened will be marked with the appropriate colored tags as defined in the PCM.

The spacing of live service identification markers will be no more than 26 feet (7.9 meters) apart, except on uninterrupted runs, where the spacing may be up to 98 feet (29.9 meters).

High Voltage Identification
All live high-voltage lines will be identified with markers stating, “Danger Live Cables.”

Low-Voltage Equipment Identification
All live low-voltage equipment such as control panels, motor control centers, and junction boxes) will be identified with markers (such as “Danger 440 Volts”).

Notification
Notification will be by a brief description of the service to be energized together with (where applicable) a description of the commissioning work to be performed and an approximate duration.

4.0 INDUSTRIAL HYGIENE

4.1 BLOODBORNE PATHOGENS

These requirements provide the necessary precautions to be taken by workers who have reasonably anticipated job-related contact with blood or other potentially infectious materials.

4.1.1 Controls

Engineering Controls

Engineering controls will be used as the primary method of reducing worker exposure to harmful substances.
At a minimum, the following controls will be implemented:

- Isolation or containment of the hazard
- Disposable, puncture-resistant containers that are closeable and leak-proof on the sides and bottom and properly labeled with the universal biohazard symbol will be used for urine, used needles, blades, sharps, and other one-time-use treatment implements. These containers will be placed in the use area.
- Hand-washing facilities with anti-bacterial soap and running water will be made available. If running water cannot be supplied, germicide hand wipes will be provided.
- Appropriate and accessible PPE will be used.

Work Practice Controls

Work practice controls will be established to reduce the likelihood of exposure when a task is being performed.
Tasks that involve handling implements or utensils, use of public or shared bathroom facilities or telephones, and personal contacts such as handshaking are also not considered occupational exposure.
Examples of some work practice controls include the following:

- Universal precautions will be in effect in all occupational exposures.
- Recapping of needles or other sharps by hand is not allowed.
- Pipetting or suctioning by mouth (siphoning) is forbidden.
- Storing food or drink is forbidden in areas of potential occupational exposure.
- Eating, drinking, and smoking are forbidden in areas of potential occupational exposure.

Workers who perform janitorial services will wear rubber or latex gloves at all times when cleaning or emptying trash cans to protect against normal bacteria.

A worker's exposure is not considered occupational when the normal work routine involves no exposure to blood, body fluids, or tissues.

4.2 RESPIRATORY PROTECTION

Respiratory protection will be used to control occupational diseases caused by breathing air contaminated with harmful dust, fogs, fumes, mists, gases, smoke, vapors, and sprays.

The Project Lead will implement this respiratory protection program and ensure workers requiring respirator use are properly trained, medically evaluated, as required by regulation, and fit tested to the make, model and size respirator being worn.

Supervision will enforce the respiratory protection program.

The EHS Project Lead will provide initial and as-needed training to workers required to wear respiratory protection.

Training will include the selection of a properly fitting facepiece and the trial wearing of each type of respirator to be used.

4.3 HEARING PROTECTION

The EHS Project Lead will monitor noise levels to identify work areas or specific equipment that exceed 85 dBA (A-weighted decibels).

Project EHS will:

- Conduct documented noise surveys and exposure monitoring
- Assist line management in completing JHAs and STAs, or other hazard identification processes to identify operations that may potentially expose workers to 85 dBA TWA or more or an equivalent noise dose
- Recommend engineering and administrative controls and evaluate their effectiveness
- Recommend appropriate types of hearing protection and evaluate their effectiveness in controlling exposure
- Review and approve purchase requests for hearing protection
- Conduct walk-through surveys to determine changes in work activities or equipment that could affect noise exposure and document qualitative assessments of noise hazards
- Assist supervision in reporting exposure monitoring results and other information to affected workers

Supervision will:

- Determine which job assignments could expose a worker to noise levels

- Ensure workers are trained on the effects of noise exposure and the proper use of earplugs and/or earmuffs for workers who work in areas exceeding 85 dBA
- Implement engineering and administrative controls to reduce worker exposures to 85 dBA or less where feasible
- Provide and enforce the use of adequate earplugs and/or earmuffs for workers who work in areas exceeding 85 dBA

4.4 HAZARD COMMUNICATIONS

Safety data sheets (SDSs) are the primary documents on which the hazard communication program is based.
The EHS Project Lead will develop a written hazard communication program in compliance with site-specific regulations.
Workers will be provided with access to the hazard communication program.

4.4.1 Safety Data Sheets

The EHS Project Lead will develop and implement a site-specific SDS program for managing SDSs for products used and stored at the project.

SDSs will be legible and accurately represent the product.

Product SDSs should be periodically reviewed or within the dated three calendar years to ensure the information on the label of the data sheet for a substance or mixture is based, even if no new or significant information has been provided with respect to the substance.

Workers will have ready access to review and copy the SDSs for materials they work with.

An inventory list of the names of hazardous materials used in the project will be maintained.

Procurement, Shipping, and Receiving, or the Contractor will provide EHS with a current copy of the SDS, or adequate product information to obtain an SDS.

EHS will reject products that do not meet the requirement of an acceptable SDS.

Line management will ensure that hazardous materials received have legible SDSs before use.

4.4.2 Labeling

All contractors should develop a list of all chemicals used on the project, gather Safety Data Sheets (SDS) for those materials, follow the Globally Harmonized System's (GHS) labeling system for all materials.

Manufacturer's Label

A manufacturer's label will be attached to hazardous material containers.

Additional labeling need not be applied to the container if the manufacturer's label is legible and contains the following information in English and in the primary language spoken by the workforce:

- Manufacturer name and address
- Identity of the material
- Associated health and safety hazards
-

The product will be returned to the manufacturer if the information is not included on the manufacturer's label, or disposed of in accordance with applicable local/in-country requirements.

Secondary Container Labeling

Workers will label secondary containers (such as pots, buckets, or pans) that are filled daily with a hazardous material.

Labeling is not required for single-use soak pans, paint pots, or buckets used for "immediate use" and not reused with the same product on subsequent days. If it is uncertain if labeling is required, the container should be labeled or the Gridworks EHS Representative called for assistance.

4.5 CRYSTALLINE SILICA EXPOSURE

Crystalline silica is present in substantial quantities in sand, concrete, sandstone, granite, bricks, and cinder blocks. Exposure to crystalline silica is commonly found on, but not limited to involvement in:

- Grinding on concrete outdoors without grinder manufacturer-supplied dust control
- Sawing on concrete or masonry, dry
- Sawing on asphalt, dry
- Breaking up (demolishing) concrete using a backhoe
- Jack hammering or chipping on concrete or masonry
- Rock crushing
- Housekeeping tasks (sweeping, cleaning with pressurized air, etc.)
- Pouring sand, such as at a cement plant
- Other activities that generate visible clouds of silica dust

Crystalline silica exposures from occupationally-derived silica sources are a health hazard to the human respiratory system. Airborne silica caused by sand storms and other weather-related events does not appear to be a health threat to normally healthy individuals.

If there is a reasonable expectation of exposure, the EHS Project Lead will develop a site-specific Crystalline Silica Control Plan (SECP). This plan will specify the PPE requirements for silica dust exposure, but at a minimum, employees taking part in any activity that produces silica dust will be required to wear NIOSH-rated N95 or higher respirators. Additional controls and measures will be implemented as defined on OSHA's 1926.1153 Table 1-Specified Exposure Control Methods When Working With Materials Containing Crystalline Silica..

4.5 SANITATION FACILITIES

4.5.1 Washing Facilities

The Project Lead will provide sanitary accommodations that meet or exceed accepted local standards of care proximity and placement.

The Project Lead will:

- Provide and maintain washing facilities in a sanitary condition that meets or exceeds accepted local standards of care, proximity, and placement, and the following minimum requirements based on the size of the project workforce.
- Sinks or basins used for washing will be provided in the vicinity of each toilet at the project
- Sinks or basins used for washing will be provided in the vicinity of eating facilities
- Mobile work crews and those working at normally unattended work locations will have transportation readily available to nearby washing facilities
- Washing facilities will be equipped with ordinary soap, water, and paper towels or with special compounds designed specifically to remove harmful chemicals and other contaminants from the skin

General washing facilities for other workers should be appropriately provided throughout the site.

4.5.2 Toilet Facilities

The Project Lead will provide toilet facilities maintained in a sanitary condition and the following minimum requirements, based on the size of the project workforce as specified below.

NUMBER OF WORKERS	MINIMUM NUMBER OF FACILITIES
20 or fewer	1 toilet seat
20 - 200	1 toilet seat and 1 urinal per 40 workers
200 or more	1 toilet seat and 1 urinal per 50 workers

The Project Lead will:

- Provide sanitation services for all toilet facilities used by personnel, including cleaning and servicing on a scheduled basis, that will prevent the facilities from becoming unsanitary and unusable. Toilets will be provided with an adequate supply of toilet paper.
- Include a toilet seat and a urinal in each sanitation unit unless specifically designed for women's use only.
- Units will be placed on a firm, level ground, good and accessible for cleaning, emptying, and maintenance activities
- Units will be protected from exposure to vehicle/equipment
- Units will be secured from tipping in high winds
- Portable hand wash facilities shall be provided accordingly
    - Monitor the portable sanitation unit site conditions and periodically inspect them for hazards
- Access at entrances will be maintained free from tripping hazards and be well drained
- Immediately remove toilet facilities that have become inoperable due to water supply, plumbing problems, or full and cannot be used in a sanitary manner
- Separate toilet facilities will be provided for men and women

4.6 HEAT AND COLD STRESS MANAGEMENT

The EHS Project Lead will develop a specific written Heat Stress Plan when temperatures become higher than 80°F for whatever reason (natural weather conditions or industrial heat sources).

The EHS Project Lead will develop a specific written Cold Stress Plan to prevent frostbite and allow workers to warm up when work is performed in conditions that expose workers to wind chill below 5°F.

Supervision will communicate the Heat and Cold Stress Plan to workers.

Workers will be trained in the Heat and Cold Stress Plan.

Supervision will implement the Heat and Cold Stress Plan so workers do not develop heat or cold-related illnesses.

Supervision will assess tasks to identify possible work practices or environments that could cause heat or cold stress.

Supervision will consider the potential severe heat or cold stress impacts on workers and the management of those impacts in their daily pre-task planning.

Supervision will monitor workers for compliance with the Heat and Cold Stress Plans.

Project Management will ensure compliance with the Heat and Cold Stress Plans.

The EHS Project Lead will include response procedures for heat and cold-related emergencies in the project ERP.

In situations where heavy physical workloads must be performed when the heat index exceeds 90°F (32°C), the following will be provided at a minimum to allow workers to rest and cool down. Additional precautions may need to be implemented as workload and/or heat index increase, in areas with limited ventilation, or when working near hot equipment or additional heat sources.

- Shaded break areas with fans, misters, swamp coolers, air conditioning or other cooling means.
- Provide adjusted break schedules for resting and drinking water more frequently
- Conduct work using the buddy system

5.0 INDUSTRIAL AND CONSTRUCTION SAFETY

5.1 PERSONAL PROTECTIVE EQUIPMENT

The EHS Project Lead will perform a hazard assessment to determine hazards that require using PPE before commencing work.
Workers and visitors will wear long-sleeved shirts, long pants/trousers, and safety footwear in addition to issued Personal Protective Equipment (PPE) to protect them from workplace hazards that cannot be eliminated or reduced to an acceptable level by other controls.
The use of PPE for protection against the hazards identified will be enforced.
The minimum PPE required for workers before accessing industrial (non-office) work environments includes:

- Long-sleeved shirt
- Long pants/trousers
- Safety footwear that covers the ankle
- Hard hat (meeting ANSI/ISEA Z89.1-2014)
- Eye protection appropriate for the task (safety glasses that meet the ANSI Z87.1-2020).
- High visibility clothing or vest worn at least on the upper body and meeting ANSI/ISEA 107-2020 standards for daytime and nighttime visual conspicuity
- Gloves appropriate for the task (general-duty work gloves at a minimum)
    - Gloves will not be worn around rotating machinery or where the hazard assessment shows increased risk from wearing gloves.

Long hair will be tied back and secured to prevent entanglement.
A lanyard worn around the neck, such as one used to display a badge, access card, identification, etc., will be designed to safely break free of the wearer if it becomes entangled in equipment or machinery.
Required PPE shall be provided in a variety of sizes and styles to ensure a proper fit for the full range of diverse personnel in the project.

5.1.1 Head Protection

Workers will wear a hard hat that is in good condition and meets applicable regulatory compliance standards (ANSI/ISEA Z89.1-2014).
Alteration of hard hats is prohibited.
Hard hats will be worn with “brim to the front.” The typical exception is for welders whose hard hats may have to be reversed to accommodate welding shields while performing welding operations. If hard hats cannot be worn during welding operations, alternate means of overhead protection will be provided. When not welding, welders wear hard hats with brims to the front.

5.1.2 Eye and Face Protection

Workers and visitors will wear safety eyewear with side shields ¬ designated “high impact” ¬ that is in good condition and meets applicable standards (ANSI Z87.1-2020) in all work areas except offices.

Prescription glasses must meet the applicable standards. Cover-all glasses or goggles will be required for prescription glasses that do not.

Additional eye and face protection (such as goggles, face shields, welding shields, etc.) will be required when engaged in operations including, but not limited to, welding, burning, grinding, chipping, handling chemicals (such as corrosive liquids or molten materials), drilling overhead, using powder-actuated tools, operating lasers, and pouring concrete.

Workers and visitors may wear photo-gray safety lenses, except where prohibited. Permanently tinted lenses may only be worn in outside work areas.

Contact lenses are permitted unless indicated otherwise by area signage.

5.1.3 Foot Protection

Workers will wear substantial protective footwear. Substantial footwear is footwear made from leather or equally firm material that excludes high heels, open toes, sandals, and a cloth or athletic footwear.

Appropriate footwear will be based upon scope of work and activities to be performed; however, construction workers (craft and direct Supervisors) are required to wear safety-toed work boots that conform to American Society of Testing and Material (ASTM) F241205/F241305 standard, or similar.

Additional foot protection (such as metatarsal guards) will be worn when operating equipment including, but not limited to: tamps, jackhammers, and line-trimmers.

5.1.4 Hand Protection

Workers will wear general duty gloves, at a minimum, except when working around rotating machinery where the hazard assessment shows an increase in risk from wearing gloves.

Gloves shall be provided and worn when handling material that could burn, cut, tear, or cause injury to the skin.

Wearing rings and watches is strongly discouraged. Jewelry can catch and cause injuries when climbing, handling materials, or working with machinery.

5.1.5 Inspection

Workers will inspect PPE before use to ensure it is fit for use.

Defective or damaged PPE will be immediately removed from use and repaired or disposed of in accordance with the manufacturer's specifications.

5.1.6 Workforce Identification

Role	Hardhat Color	Hi-Vis Vest Color
EHS	White	Yellow
Management	White	Yellow
Superintendents	White	Yellow
General Foreman	White	Yellow
Foreman	Orange	Yellow
Crafts	Yellow	Orange
Rigger	Yellow	Red
Emergency Responders	Blue	Blue

5.2 FIRE PREVENTION AND PROTECTION

The fire prevention and protection program intends to ensure that a fire does not occur, cause an unacceptable onsite or offsite release of hazardous material, or threaten worker health or safety, public health or safety, or the environment.

The Project Lead will:

- Document project requirements regarding storage and use of flammable liquids and gases
- Enforce the implementation of the fire prevention and protection program
- Provide approved containers for flammable liquids and cloths, rags, and waste soaked with flammable liquids
- Inform the building manager/client in advance of planned tests, inspections, and modifications or maintenance activities that could result in impairment of fire protection systems
- Prohibit smoking in areas where fire hazards may exist and install "No Smoking" signs
- Investigate and take corrective actions to prevent the recurrence of fires
- Designate and ensure training of workers for each area to be responsible for implementing necessary elements of this program and to perform monthly fire protection checks
- Report all fires to the onsite or client fire department if one exists

- Report unplanned or emergency fire protection system or equipment impairments to the building manager/client

The EHS Project Lead will:

- Study and confirm that Client emergency plans adequately protect Gridworks workers in the event of a fire
- Coordinate the fire prevention and protection program
- Participate in fire incident investigations
- Act as the technical fire protection contact
- Retain a basic understanding of the fire protection systems and provide fire prevention inspection briefings, as requested, to building managers or their designees

Supervision will:

- Limit accumulation of combustible materials to the quantity required for current needs
- Ensure trash and rag containers are emptied daily
- Develop specific fire protection checklists that incorporate applicable systems in conjunction with the EHS Project Lead
- Conduct fire inspections
- Ensure findings of inspections are promptly mitigated

Workers will:

- Not block fire lanes
- Smoke only in designated areas
- Separate combustibles from ignition sources
- Minimize indoor stockpiles of combustible construction materials
- Dispose of empty crates and containers as soon as possible
- Use noncombustible or fire-retardant materials whenever possible
- Conduct welding, cutting, burning, and other heat-producing activities in accordance with the Hot Work (Welding, Cutting, and Burning) requirements
- Install electrical wiring and equipment in accordance with applicable standards
- Report potential fire hazards to their immediate supervisor or the area monitor
- Immediately report fires by activating a fire alarm pull box and calling the emergency line
- Notify their immediate Supervisor of any fires
- Utilize fire extinguishers as trained if a fire occurs

5.1.1 Portable Fire Extinguishers

Fire extinguishers are considered first-response devices designed for use on small fires.

A fire extinguisher rated not less than 3A will be provided for every 3,000 square feet (270 square meters) of protected building area and in each yard storage area. The travel distance to any fire extinguisher will not exceed 75 feet (22.9 meters) (or as designated by the authority having jurisdiction) from any protected area inside or outside a building.

Extinguishers rated at least 10B will be provided within 50 feet (15.2 meters) of any area in which more than 5 gallons (19 liters) of flammable liquids or 5 pounds (2.3 kilograms) of flammable gas are being used. This does not apply to motor vehicle fuel tanks.

Carbon tetrachloride extinguishers are prohibited.

Extinguishers will be conspicuously located and marked, readily accessible, and immediately available in case of fire. Extinguishers will be installed on hangers or in the brackets provided, and at the appropriate height according to the authority having jurisdiction.
Fire extinguishers required during work or scaffolds will be readily available (within reach) to the workers.

Fire extinguishers will be inspected when initially placed into service, monthly thereafter, and more frequently as required. The following items will be verified through inspection:

- The extinguisher has a designated location
- Integrity of the extinguisher's mounting
- The extinguisher is visible
- Extinguisher is accessible
- Operating instructions on the nameplate are legible and facing outward
- Safety seals and tamper indicators not broken or missing
- Fullness as determined by weighing or "hefting"
- The extinguisher has no obvious signs of physical damage, corrosion, or Leakage
- Hose is in good condition
- Nozzle is in good condition
- Pressure gauge reading or indicator is in the operable range or position
- Tires, wheels, and carriage in good condition (for units with wheels)
- Comprehensive maintenance has been performed in the last 6 years (the date of the last hydro-comprehensive maintenance or the date the unit was placed into service – date is usually found on a label on the case)
- Hydrostatic test has been performed in the last 12 years (the date of the last hydro or the date the unit was placed into service – date is usually found stamped into the case or on a label on the case).

Durable inspection tags will be securely attached to the extinguishers. They will provide the inspection date, maintenance test, recharge date, and the initials or signature of the person who performed the inspection.

Stored pressure fire extinguishers that require 12-year hydrostatic testing will be emptied every six years and subjected to applicable maintenance procedures.

A discharged fire extinguisher will be immediately removed from service.

5.3 HOUSEKEEPING

Supervision will periodically inspect each work area to ensure the housekeeping expectations are met.

Supervision assumes overall responsibility for housekeeping. Work areas will be kept clean to the extent the nature of the work allows, including, but not limited to:

- Maintaining organized and uncluttered work areas and work surfaces
- Preventing the accumulation of trash, waste materials, debris, and other tripping hazards
- Leaving areas in a safe condition before leaving the work area for break, lunch, shift, etc.
- Providing safe access to and from the work area
- Replacing barricades or safety chains
- Removing tools and other items from walkways
- Arranging materials stably so that they do not protrude into walking surfaces
- Placing materials stored above work surfaces back from edges or behind protective barriers to protect workers below
- Cleaning the work area after completion of a job
- Cleaning and sweeping in a manner that minimizes the contamination of the air with dust or particulate matter
- Maintaining floor/walking surfaces in a dry condition as far as practicable
- Cleaning up spills or mark the area with safety barricades until the spill can be cleaned up
- Ensuring that the work area does not pose a risk to people who may enter the area
- Micro trash in all areas will also be kept at bay.

When it is necessary that items must span walking and working surfaces, proper methods of support and/or protection will be used. Hoses and electrical conductors that cross aisles or passageways must be covered or suspended overhead so that they do not pose a tripping or entanglement hazard.

Floors, working surfaces, and passageways will be kept free from protruding nails, splinters, loose boards, and openings.

Exits, fire alarm boxes, fire extinguishing equipment, electrical disconnect panels, and other emergency equipment must be kept clear of obstructions at all times.

Littering anywhere on the Project or Client property is prohibited, and subject to disciplinary action.

5.4 BARRICADES, SIGNS, AND TAGS

Worker failure to comply with safety signs, tags, or barricades will result in appropriate disciplinary action in accordance with the Disciplinary Process requirements of this Project EHS Plan.

5.4.1 Barricades

Barricades are required in accordance with Excavation, Trenching, and Shoring and Fall Protection, edges of platforms, and certain types of overhead work.
Barricade tape will be accompanied with signs or tags to clearly communicate the hazard and include the following:

- Date placed
- Name of supervisor who placed the barricade
- Hazards associated with the barricade

Tags will be removed after the condition that prompted their placement is resolved.

As soon as hazards have been mitigated barricade tape and signs will be removed by the person, or supervisor of the person, who placed them. This action will reinforce the importance of barricades, improve access, and reduce clutter.

Warning Barricades

Warning barricades will serve to alert personnel in the area that a hazard is present, but offer no physical protection.

Warning barricades will be set back 6 feet (1.8 meters) minimum from the hazard

- If 6 feet (1.8 meters) is not feasible, a protective barricade should be used
- If the hazard is a potential fall of 6 feet (1.8 meters) or more, refer to the Fall Protection requirements section of this Project EHS Plan.

Barricade Tape

Barricade tape will be of a color or combination of colors that convey the appropriate level of hazard. Refer to figure below.

BARRICADE TAPE COLOR	PURPOSE	ENTRY PERMISSION	USES
Yellow/Black	Caution to indicate to workers that a potential hazard exists	No permission required	Excavation 1 to 4 feet (0.3 to 1.2 meters) in depth Identification of trip hazards and low-hanging objects Material storage on the site
Red	Danger and that a potential serious hazard may be present	Assigned Workers Workers with barricade owner permission	Overhead work Live electrical components Scaffold under construction Around the swing radius of equipment with a rotating superstructure Excavations 4 feet (1.2 meters) or more in-depth Equipment under commissioning control
Magenta (Purple) and Yellow	Dangers associated with radiation and that possible exposure may be present	Assigned Workers Workers with barricade owner permission	X-ray work being performed

Barricade tape will be installed to enclose the specific area to be protected. In general, passageways will not be blocked. If passageways or accessways will be blocked, coordinate with Project Management for possible alternatives.

Tape will be installed in a secure and neat manner that will maintain a height of between 40 and 45 inches from the floor or ground surface.
“Hurricane” fence (or equal) is required for areas accessible to the public.

5.4.2 Signs

Signs will be placed in strategic and prominent locations to warn against hazard, or in combination with barricade tape/fencing.

Danger signs will be used where a serious hazard exists. Danger signs have a predominantly red upper panel with black outlined borders and a white lower panel for additional lettering.

Caution signs will be used to warn against potential hazards or to caution against unsafe practices. Caution signs are predominantly yellow with a black upper panel and borders and a a lower panel for additional lettering.

5.4.3 Tags

Danger tags are used for warning workers of defective tools or equipment.

Danger tags will not be used as a substitute for signs.

5.5 MANUAL HANDLING

Manual handling operations include transporting or supporting a load, including lifting, lowering, putting down, pushing, pulling, carrying, or moving by hand or by bodily force.

Workers have a duty to make full and proper use of any information, tools, or services provided by an employer in connection with manual handling.

Project Lead will verify that tasks will be assessed for the risk of injury or harm from manual handling.
The Project Lead will verify that tasks involving hazardous manual handling are identified before:

- Tasks involving manual handling are undertaken for the first time in the workplace
- Alterations are made to objects used in a workplace or to systems of work that include a task involving manual handling, including a change in the place where that task is carried out
- New or additional information about hazardous manual handling being associated with a task becomes available
- An occurrence of a musculoskeletal disorder in a workplace is reported by, or on behalf of, a worker.

5.6 TOOLS, EQUIPMENT, AND SHOP FACILITIES

No modifications or additions that affect tool capacity or safe operation will be made without the manufacturer's written approval. If the manufacturer will not approve modifications or changes, written approval from a registered professional engineer or the EHS Project Lead may be considered. If such modifications or changes are made, the capacity, operation, and maintenance instruction plates, tags, or decals will be changed accordingly.

Hazardous materials used in the workplace will be stored in approved safety cans and inside flammable storage containers when not in use. Only a one-day supply will be permitted in the work area outside of an approved storage cabinet.

Equipment subject to tipping over or moving (vibrating) off tables will be secured to prevent movement.

Warning signs or labels will be placed on equipment as required for safe operation, including wearing the appropriate PPE.

Operational safety interlocks will be used on all equipment as required (such as power brakes/presses, shears, and drill presses).

Workers will not be permitted behind equipment without the operator's knowledge until the equipment is shut down.

Supervision will ensure that hand and portable power tools covered by this program are:
Inspected before use

- Tagged, or if found defective, identified as defective and turned in for repair or replacement
- In conformance with manufacturer's specifications and equipped with required guards
- Disconnected from their energy source when relocating the tool to a new work area, changing attachments, or conducting repairs/maintenance on the tool
- Not hoisted or carried by attached hoses or electrical cords
- Used with appropriate eye, face, hand, foot, hearing, and respiratory protection
- Connected to ground-fault circuit interrupter (GFCI) / Residual Currency Device (RCD)
- Supervision will ensure that hand tools are maintained and used properly and that:
- Workers keep hands and other body parts clear of the point of operation (blade, bit, etc.) at all times while the tool is connected to its energy source.
- Wrenches with sprung jaws are not used.
- Impact tools (such as drift pins, wedges, and chisels) are kept free of mushroomed heads.
- Portable power saws and grinders are equipped with approved blade or wheel guards.
- Blades and wheels have the proper rating and revolutions per minute for the tool.
- Wooden handles of tools are kept free of splinters or cracks and are kept tight in the tool.
- Workers using hand and power tools exposed to the hazard of falling, flying, abrasive, and splashing objects, or exposed to harmful dust, fumes, mists vapors, or gases are provided with particular PPE necessary to protect them from the hazard.
- Damaged and mis-operating equipment is tagged out of service and not to be used until repaired.

Supervision will ensure that portable electrical tools are:

- Double-insulated or grounded in accordance with the Electrical requirements.
- UL-listed, 115 or 220-volt AC or AC/DC marked accordingly by the manufacturer.
- Equipped with a constant pressure switch that shuts off power when the operator releases pressure.
- Hand-held power grinders with wheels 2 inches (5.1 centimeters) or less in diameter, and routers, planers, laminate trimmers, nibblers, shears, scroll saws, and jig saws with blade shanks ¼ inch (0.6 centimeters) wide or less, may be equipped with a positive "ON-OFF" switch.

Supervision will ensure that portable pneumatic tools are equipped with:

- A tool retainer to prevent the tool from being ejected

  - A safety device on the muzzle nailers and staplers that operates at more than 690kPa (100 psi) pressure and has an automatic fastener feed to prevent unexpected ejection of the fasteners
- A pressure reduction device to prevent hoses with an inside diameter of ½ inch (1.3 centimeters) or greater from whipping in the event of hose failure
- A "Deadman" switch
- A positive means to secure the tool to the hose or whip to prevent the tool from becoming accidentally expelled

Supervisors will ensure that:

- Operators of power-actuated tools are qualified (and "licensed" if applicable) in accordance with the manufacturer's instructions and that qualification is documented.
- Power-actuated tools and loads are locked in a container, stored in a safe place when not used, and accessible only to authorized workers.
- Tools are operated in strict accordance with the manufacturer's instructions. Only the types of fastener and powder loads recommended by the tool manufacturer are used.
- Potential exposure to lead is assessed in accordance with the Lead section.
- Workers working with grinding machines, cut-off machines, or other applications for abrasive wheels are trained in their safe operation and maintenance.
  - 9-inch (22.9 centimeter) or greater grinders are prohibited.
- Rotating tools and equipment missing shields and gards are to be tagged out of service and not used until repaired.
- Disciplinary action is taken with employees that remove protective guards from tools and equipment.

Workers using powder-actuated tools will:

- Inspect and test the tool in accordance with the testing methods recommended by the manufacturer to determine if it is in proper working condition before use.
- Verify what is on the other side of the material(s) being fastened.
- Confirm the line of fire to ensure that no one may be struck if the fastener penetrates completely through the work surface before driving a fastener.
- Use the correct shield, guard, and/or attachments specified by the manufacturer.
- Not drive fasteners into very hard or brittle materials, including cast iron, glazed tile, hardened steel, glass block, natural rock, hollow tile, or face brick.
- Not drive fasteners into easily penetrated materials or materials of questionable resistance unless backed by a material that prevents the fastener from passing completely through the other side.
- Not load tools until just before the intended firing time.
- Not point loaded or empty tools at any person.
- Keep hands clear of the open barrel end.

- Hold the tool perpendicular to the work surface when fastening into any material, except for specific applications recommended by the tool manufacturer.
- Holds the tool firmly against the work surface for a period of 30 seconds and then follows the explicit instructions set forth by the tool manufacturer in the event of a misfire.
- Post a sign that reads “POWDER-ACTUATED TOOL IN USE”, or similar, in plain sight that meets the following criteria:
- Not use in an explosive or flammable atmosphere.
- Verify that tools are inspected, cleaned, maintained, and tested after each 1,000 fastenings.
- Documentation of each inspection, cleaning, and testing is retained in the workplace.
- Handle and dispose of cartridges according to the SDS when misfired.

Workers using abrasive wheels and tools will:

- Handle and store in a manner that prevents damage to the wheels.
- Abrasive wheels to be placed in a manner that prevents foreign material such as dirt from collecting on them.
- Not modify or alter abrasive wheels and the mounting hardware or components of machines on which they are mounted.
- Use the correct size and type of abrasive wheel for the machine on which they are to be mounted and for the work to be performed.
- Ring test abrasive wheels before mounting, and visually inspect before use daily.
- Run new wheels after mounting for a minimum of 1 minute at full speed before work is applied or workers stand in front of, or in line with, the wheel.
- Ensure that guards are in place. Willful removal of

5.7 EXCAVATION AND TRENCHING

An excavation is any man-made cut, cavity, or depression in the Earth’s surface formed by earth removal.
A trench is defined as a narrow excavation (in relation to its length) made below the ground's surface.

The Project Management Team will issue a Ground Disturbance Permit before the start of workto subcontractors performing the activity. A request for underground utility locate must be completed by contqacting 811 prior to requesting a Ground IDsturbance permit from the Project Management Team.

Workers will not work in excavations in which there is accumulated water or where water is accumulating unless adequate precautions have been taken to protect workers against the hazards of water accumulation.

A Competent Person will monitor the removal activities to ensure proper operation If water accumulation is controlled or prevented by water removal equipment.

Each worker in an excavation will be protected from cave-ins by adequate and approved protective systems.

Protective systems will resist all intended loads or could reasonably be expected to be applied or transmitted to the system.

All excavations' sides, slopes, and faces will be scaled, benched, rock-bolted, wire-meshed, or secured by other approved equally effective means. Portable boxes or sliding trench shields may be used instead of shoring or sloping. Such boxes or shields will be of strength at least equivalent to the sheeting or shoring required for the composition of the soil or material in which the trench is being made.

All trenches and excavations 4 feet (1.2 meters) or deeper will be assessed regularly for designation as confined spaces in accordance with the Confined Space requirements of this Project's EHS Plan. Designation, monitoring, emergency preparedness, etc., will be implemented based on entry permit requirements.

Where oxygen deficiency (atmospheres containing less than 19.5 percent oxygen) or a hazardous atmosphere exists or could reasonably be expected to exist, such as in excavations in landfill areas or excavations in areas where hazardous substances are stored nearby, the atmospheres in the excavation will be tested before workers enter excavations greater than 4 feet (1.22 m) in depth.

In trenches, 4 feet (1.2 meters) or more in-depth, ladders, steps, ramps, or other safe means of access/egress will be provided and located to require no more than 25 feet (7.6 meters) of lateral travel for workers. If ladders are used, the ladder will extend 3 feet (.9 meter) above the original surface of the ground and will be secured.

Workers will be protected from excavated or other materials and equipment that could pose a hazard by falling or rolling into excavations. Protection will be provided by placing and keeping such materials or equipment at least 2 feet (0.68 meters) from the edge of the excavation, by using retaining devices that are sufficient to prevent materials or equipment from falling or rolling into excavations, or by combining both.

Excavation areas, as well as adjacent areas, will be inspected by a Competent Person before work starts on every shift, after every rainfall, as soil conditions change, and as needed throughout the shift where worker exposure can be reasonably anticipated

5.8 HOT WORK

Before starting hot work operations, a hot work permit and Area Assessment will be completed and signed by a Hot Work Authorized Permit Issuer and the Hot Work Supervisor.

Workers will perform hot work operations in a designated hot work area unless the task requires it to be performed in an operational/construction environment (non-designated hot work area).

Before the commencement of hot work operations, supervision will be completed, and an area assessment will be performed where hot work is to take place.

During the Area Assessment, the Supervisor will:

- Survey the area to identify combustible materials and hazardous areas at the worksite and prepare the worksite for the job.
- Material that ignites and burns is considered combustible. The most common materials likely to become involved in the fire include:
    - Combustible building construction, such as floors, partitions, and roofs
    - Combustible groundcover such as grass and brush
    - Combustible contents such as wood, paper, textiles, plastics, chemicals, and flammable liquids and gases

    - Perform one of the following actions if combustibles are present in the work area:
        - Relocate the job.
        - Move the combustible materials at least 35 feet (10.7 meters) away from the work.
        - Protect the combustible materials within 35 feet (10.7 meters) of the work by using non-combustible/FR covers, shields, or blankets or, if appropriate, wet the materials.

- Provide a trained and dedicated Fire Watch person for each hot work job and ensure that they know (only when applicable)
    - Area to be watched
    - Potential fire hazards (to personnel and property)
    - Appropriate emergency procedures and actions
    - Methods for sounding the alarm(s)
    - Process for manually activating fire suppression systems
    - Location of the portable fire extinguisher
    - Must remain in the area for 30 minutes after hot work has been completed.

- Provide the fire watch/standby person with a fully charged and operable fire extinguisher and/or other extinguishing agent(s) appropriate for conditions as specified on the hot work permit.
- Ensure that the necessary workers are ready to begin work

Prior to the commencement of hot work operations, hot work personnel will verify:

- Hot work equipment used (such as torches, regulators, pressure-reducing valves, and manifolds) is listed or approved by a nationally recognized testing laboratory for the intended use.
- Oxygen-fueled gas systems (such as oxygen/acetylene welders) have listed or approved backflow valves, flash arrestors, and pressure relief devices.
- Combustibles in contact with the metal are protected from ignition caused by ambient heat conduction, or that they are too far from the heat source to be a risk if the hot work is performed on pipes or other metal.

5.9 WORKING AT HEIGHT

Supervisors responsible for planning work will consider eliminating fall hazards or substituting work methods with those that pose no exposure to fall hazards when feasible.

Workers will use guardrail systems as the primary fall prevention system for walking/working surfaces and similar locations.

Workers will guard wall openings and open-sided platforms as soon as practical during construction.

Supervisors provide stairs, ladders, or ramps for elevated areas that are used routinely.

5.9.1 Personal Fall Arrest Systems

Workers will wear a PFAS when engineered barriers/administrative controls are not feasible or when directed by pre-job planning as an added layer of protection.

A PFAS consists of three components: A Class III full-body harness with a deceleration device (such as a shock-absorbing lanyard or inertia reel) attached to a suitable attachment point.

All components of a PFAS must have a minimum breaking strength of 5,000 pounds (22.2 kN).

Each harness and lanyard will have a label that displays the manufacturing date. If this label is missing, illegible, or torn, the harness shall be taken out of service and destroyed.

The Harness and Lanyard should not be used beyond the manufacturer's specified date.

A Competent Person will inspect out-of-date equipment and destroy out-of-date harnesses and lanyards that do not pass inspection.

Workers shall inspect all components of the PFAS before each use.

Lanyards used in PFAS will be designed and used to limit a person's fall to no more than 6 feet (1.8 meters). The lanyard or reel will be attached to a suitable anchorage at all times while the person is in an exposed position. At times, this requirement may necessitate the use of 2 lanyards so that one can be left attached while the second is being moved to the next anchorage, otherwise known as "100% tie off".

Safety harnesses and lanyard assemblies can withstand a tensile loading of 5,000 pounds (22.3 kgs) force without cracking, breaking, or taking a permanent deformation.

PFAS components will be used only for the worker's protection and not for hoisting materials unless approved by the manufacturer. Conversely, equipment and components used for hoisting materials cannot be used for fall protection.

Workers will remove from service PFAS equipment exposed to impact loading. Additionally, any harnesses and Lanyards shall be taken out of service and destroyed if any of the belts, loops, lugs are damaged or modified.

PFAS shall not be used if the belts or harnesses are soaked with oil or covered with paint.

5.9.2 Lanyards

Workers will use lanyards that meet the following requirements:

- The maximum length of a lanyard is 6 feet (1.8 meters) in length, and it will be equipped with self-locking hooks on each end
- Snap hooks will be of a double-locking design to prevent accidental disengagement
- The lanyard will be equipped with an energy absorber
- Knots will not be tied in a lanyard (knots reduce the strength of the lanyard)

Lanyards will:

- Be secured and attached to the harness to prevent tripping when not in use
- Not be dragged
- Not be hooked back to their self unless designed for that purpose

5.9.3 Retractable Lifelines

Workers will use retractable lifelines under the following conditions:

- The worker has been trained to use a retractable lifeline correctly
- The retractable lifeline is being used in conjunction with a complete fall-arrest system
- The system is configured as per manufacturers specifications

- The equipment is being inspected and serviced as required under the manufacturers and site-specific maintenance program
- The equipment has passed a pre-use inspection
- Only one worker uses a retractable lifeline at a time

5.9.4 Training

A Competent Person will train workers potentially exposed to fall hazards prior to issuance of personal fall protection equipment, or participation in work with fall hazards mitigated by administrative controls.

Training will be documented according to Training and Orientation section of this Project HSE Plan. Training includes (at least) the following topics:

- General requirements of Fall Protection
- Recognition of fall hazards
- Nature of fall hazards
- Correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used to include review of manufacturer literature or product information sheets
- Use and operations of guardrail systems, PFAS, warning-line systems, safety monitoring systems, controlled access zones, and other protection used
- Anchoring and attachment techniques
- Limitations on use of mechanical equipment during work on low sloped roofs
- Correct procedures for handling and storage of equipment and materials, and the erection of overhead protection
- Role of workers in fall protection work plans

5.10 PORTABLE LADDERS

Ladders will:

- Be designed and constructed to a recognized international standard
- Have rungs and steps that are:
  - Slip-resistant by design or coated with a skid-resistant material
  - Fixed to prevent turning or rolling when stepped on

    - Uniformly spaced as follows:
        - Portable ladders are 10 to 12 inches (25.4 to 30.5 centimeters)
        - Step stools are 8 to 12 inches (20.3 to 30.5 centimeters)
- Have safety feet equipped with nonslip bases to help prevent slipping
- Have components with smooth surfaces to prevent punctures lacerations, and to prevent snagging clothing
- Have metal spreaders or locking devices on stepladders to hold the ladder in an open position during use
- Fiberglass ladders must not be painted for they can cover cracks and prevent dull inspection. Painted ladders shall not be used on site

5.10.1 SELECTION

Workers will select ladders that are:

- The right height for elevated work
- Specifically rated and designed for the task

Ladders will be selected as to not interfere with performance of the work.

The following types of ladders are prohibited:

- Wooden or aluminum ladders
- Straight ladders longer than 20 feet
- Extension ladders longer than 30 feet when fully extended

5.10.2 INSPECTION

Ladders will be inspected monthly, pre-use, and when conditions change (such as being dropped, or moved from a dirty area to a clean area).

A Competent Person will perform a general inspection of ladders for visible defects at least once each month, and following any occurrence that could affect the safe use.

Workers will inspect ladders for the following before use:

- Broken or missing rungs, cleats, or steps
- Bent, broken, or split side rails
- Corroded or missing components
- Worn bolts, rivets, and the holes in the ladder where the bolts or rivets pass through
- Mechanical features
- Ropes on the ladder (fraying, wear, or weather-damaged)
- Feet (range of motion)

- Bent or damaged extension ladder latches or stepladder locking braces
- Missing ladder ratings labels

When deficiencies are noted:

- Immediately remove defective ladders from service and tag with “DANGER – DO NOT USE”
- Destroy ladders destined for disposal

5.11 AERIAL LIFTS AND ELEVATING WORK PLATFORMS

Aerial lifts and elevating work platforms (hereafter referred to as lifts) are used for equipment that provides a guard-railed platform for personnel to work in elevated locations (such as scissors lifts, articulating boom lifts, and truck-mounted lifts).

A Competent Lift Operator will perform an initial documented inspection of lifts received for use through purchase, contract obligations, or rental to verify that there are no mechanical defects or safety deficiencies before use.

A Lift Operator will perform a daily documented inspection before use. If any deficiencies are found, the lift must be immediately tagged out of service.

The Lift Operator will terminate operation and contact supervision if a lift becomes deficient during operation.

Lift Operators will wear a full-body harness and lanyard and attach them to an approved anchorage on the lift's boom or basket.

Lift Operators will use fall protection in scissors lifts when the manufacturer has provided a designated anchorage point and has specified in the operating manual that fall protection is required.

Lift Operators will not attach fall protection system lanyards to an adjacent pole, structure, or equipment while in a lift.

All lifts must contain the manufacturers document box while in operation

Lift Operators and Ground Observers will control the area where lift operations are conducted. Lift Operators will provide safety barricades around lifts operated in restricted areas, in accordance with the Barricades, Signs, and Tags requirements of this Project EHS Plan, so that personnel cannot be caught between rotating equipment and adjacent fixed objects.

5.12 CRANE OPERATIONS AND RIGGING

5.12.1 CRANE OPERATOR

The site will validate that Crane Operators have received the required certification and qualification to safely operate the make, model, and boom configuration (such as main boom, fixed jib, and luffing jib) of each specific crane they are assigned to operate.

Government, union-sponsored apprenticeship programs or military craft training can be accepted. In such cases, the Crane Operator will present a signed and dated certificate of graduation from the respective training program on the organization's "letterhead" or a wallet card to the Crane Operator Skills Assessor for verification. The Site Manager may elect to require additional formal training or testing.

Crane Operators will possess training and licenses/certifications from an external (3rd party) source such as the National Commission for the Certification of Crane Operators (NCCCO) or the National Center for Construction Education and Research (NCCER).

Crane operator credentials shall be submitted with the crane lift package as described below.

Crane and rigging equipment will be used in accordance with the manufacturer's load limits and operating instructions. In the absence of the manufacturer's instructions, a qualified engineer will provide direction.

Crane and rigging equipment structural support, stability, and environmental operating conditions will be in accordance with the manufacturer's recommendations or per qualified person evaluation.

The Lift Supervisor will suspend operations if changes or conditions occur that would cause a deviation from the approved plans and/or permits.

The Lift Supervisor will shut down lift operations if the equipment is not in proper working condition. Operations will not proceed until hazards or concerns are rectified and the safe operation of the equipment is assured.

A Qualified Rigger will assist the operator in moving and setting up load-handling equipment.

A Qualified Rigger will be required when workers are hooking, unhooking, guiding a load, or making the initial connection of a load to a component or structure. All lifts covered by this plan must have at least one Qualified Rigger present during lifting activities.

A Competent Signal Person will be assigned to communicate with the Crane Operator(s) throughout all stages of the rigging and lifting process.

The Signal Person will not perform other roles such as Rigger.

The Signal Person will consult Qualified Rigger for cases beyond their knowledge.

Crane Operators will refuse to initiate a lift if there is reason to believe the lift may be unsafe.

Once the concern(s) have been reported to supervision and the hazards are rectified, the crane may operation may proceed.

Lifts will not be made in winds that exceed the manufacturer's recommendation, or in winds 20 mph or greater.

5.12.2 Qualified Rigger

The Qualified Rigger will meet the definition of a Competent Rigger and have an accredited external (3rd party) organization certification. The Qualified Rigger will also have the experience that aligns with the scope of the project's rigging activities.

The Qualified Rigger will possess a thorough understanding of:

- Rigging hardware capacities
- Operation, capabilities, and limitations of cranes
- Crane dynamics involved in swinging, raising, lowering, and stopping loads
- Hand, voice, and other types of signals associated with crane functions
- Pre-use inspection of wire rope and other rigging equipment
- Problem solving related to rigging loads
- Effects on loads caused by boom deflection while hoisting loads

The Project Management team will approve training and licenses/certifications from an external (3rd party) source that is recognized, accredited, and approved by such as the NCCCO or NCCER.
Rigger credentials must be submitted with the crane lift package as described below.
Rigging equipment or hardware (rigging) will be inspected initially, quarterly, monthly, and before each use. Rigging equipment includes, but is not limited to slings, shackles, lashing, lifting attachments and accessories, cranes hooks, etc.

Motor vehicles and unauthorized workers will not access areas associated with a heavy rigging or transport activity.

5.12.3 CRITICAL LIFTS

A documented Critical Lift Plan must be submitted for review and approval at least 15 working days before the lift date.

Critical Lifts are described as follows:

- Loads 75% of single crane capacity or greater

- Any part of the crane or load within 33' of energized power lines
- Tandem Lifts

Standard Lift Plans must be submitted ten days before the lift date for review and approval. Lift plans must be detailed and include comprehensive erection drawings that define all major elements of the lifting and rigging activity, including the following:

- Total weight to be lifted, including load blocks and rigging hardware
- A scale plan view showing the locations of lifting equipment, lifted items, and their relationship with any potential obstructions
- A scale elevation view that shows the relationship and clearances between the lifting equipment, lifted items, and potential obstructions
- Lifting and tailing hookups, including shackle, sling, and spreader bar sizes, lengths, and capacities
- A description of the configuration of the cranes indicating model number, boom length, boom type, auxiliary counterweights, parts of load line, jib, length, type, offset, etc.
- Crane capacities based on the actual working radii and the crane configuration
- A description of the placement of crane mats, guy lines, earth fill, or any other items required for the safe execution of the lift
- A description of any "holds" that must be placed on existing plant structures or equipment that would interfere with the lift plan
- Copies of relevant sections from load charts and manufacturer's information, such as weight of load blocks, travel/swing restrictions, etc., specific to the actual crane/load handling equipment being used
- A detailed written description that adequately describes any part of the lift not made clear by the drawings
- Documentation for any special design rigging equipment such as spreader bars, lifting lugs, etc. that states the:
    - Design code used for the design and fabrication of such items
    - Working load limits, and any restrictions to angles of slings or other operational parameters that need to be followed

5.12.4 Documentation

The following documentation (as a minimum) will be stored in the crane during operation:

- Completed pre-shift inspection
- Most recent Annual Crane Inspection
- Operating manual
- Load chart (printed or electronic – shall correspond with the configuration and serial number of the crane it is being applied with)
- Critical lift permit(s) and any associated rigging drawings

This information will correspond with the configuration and serial number of the crane it is being applied.

5.13 POWERED INDUSTRIAL TRUCKS (FORKLIFTS)

Forklift Operators will provide evidence of training, qualifications/certifications, and proficiency where a nationally recognized license or certificate is required.

Minimum qualifications of a Forklift Operator include, but are not limited to:

- Possess a valid state/country driver's license
    - All restrictions of the potential Forklift Operator's driver's license are applicable to operating forklifts
        - Project EHS will be advised of any change to the status of a Forklift Operator's license (such as cancellation or suspension).
        - The Forklift Operator will not operate forklifts for the project after his/her state/country driver's license is suspended, revoked, or otherwise affected.
    - A copy of the license will be maintained in the worker's personnel file
- Be designated by the Project Lead to drive
- Be mentally alert and possess the physical ability to operate a forklift safely
- Display a responsible attitude

In addition, Forklift Operators may also be required to attend additional training or successfully pass a skills test/performance evaluation before being assigned duties as a forklift operator.

Where a nationally recognized license or certificate is not required, Forklift Operators will successfully complete a training or retraining program conducted by a trainer knowledgeable and proficient on the operation of the forklift the employee is to operate before being assigned the work.
A Competent Forklift Operator will perform a periodic documented inspection.

A Forklift Operator will perform a daily documented inspection prior to use.

The Forklift Operator will terminate operation and contact supervision if a forklift becomes deficient during operation.

Forklifts must contain the mfr's document box or pouch while in operation.

Forklift operations in congested areas will require the use of a spotter.

5.14 MOTORIZED HEAVY EQUIPMENT

Motorized heavy equipment (hereafter referred to as equipment) includes, but is not limited to the following:

- Backhoes
- Bulldozers
- Concrete pump trucks
- Creter cranes
- Dump trucks
- Earth movers
- Excavators
- Front-end loaders
- Hydraulic excavators (Grad-all)
- Road graders
- Rollers/compactors
- Scrapers (pans)
- Service/re-fueling trucks
- Skid-steer loaders
- Tractors
- Trucks 2 tons (gross vehicle weight) or greater
- Vehicle Mounted Air tuggers
- Vibrating compactors
- Water carts/trucks

Training as required herein is considered supplemental for motorized heavy equipment controlled by more specific requirements

Heavy Equipment Operators will provide evidence of training, qualifications/certifications, and proficiency where a nationally recognized license or certificate is required.

Heavy Equipment Operators will be trained, assessed, and authorized as competent before performing required tasks on respective equipment/vehicles. Assessments will be completed in accordance with the relevant national standards.

Minimum qualifications of a Heavy Equipment Operator include, but are not limited to:

- Possess a valid state driver's license

    - All restrictions on the potential Heavy Equipment Operator's driver's license apply to operating forklifts
        - Project EHS will be advised of any change to the status of a Heavy Equipment Operator's driver's license (such as cancellation or suspension)
        - The Heavy Equipment Operator will not operate equipment for the project after his/her state/country driver's license is suspended, revoked, or otherwise affected
- A copy of the license will be maintained in the worker's personnel file
- An operator will have the appropriate endorsement for the type of equipment being driven
- Be designated by the Project Lead to drive and Provide evidence of training, qualifications and/or certifications
- Where a state/nationally recognized license or certificate is not required, the Project will comply with Motorized Heavy Equipment Training and Authorization

Heavy Equipment Operators may also be required to attend additional training or successfully pass a skills test/performance evaluation before being assigned duties as an Heavy Equipment Operator.

5.14.1 Equipment

Overhead guards and Roll Over-Protection Systems (ROPS) are required.
Equipment will be equipped with the following:

- Operator's manual
- Pre-start checklist record booklet or forms
- Functioning back-up alarm
- Functioning horn
- Seat belt
- Fire extinguisher
- Spill kit
- First Aid Kit
- All manufacturer required/installed safety devices, such as:
    - Warning lights
    - Operator cab glass (Clean and clear of chips/cracks)
    - Electronic overload protection
- Rated capacity plates are attached

Equipment will not be operated without fully functional safety devices.

Motorized heavy equipment will be equipped with Roll Over Protective Structures (ROPS). ROPSs will meet minimum performance requirements of applicable regulations, codes,

and standards. Equipment with ROPSs will also be equipped with seat restraints to be worn by the operator while the unit is in operation.
All equipment being mobilized to site must be registerd on Gridworks Hammertech app. Once mobilized to site, equipment must be inspected by Gridworks EHS team prior to use.
When heavy equipment is backing up or working in congested areas, spotters are required to assist the operator. Spotters must maintain a minimum distance of 15 feet from any piece of equipment.

5.15 ELECTRICAL SAFETY

The application includes workers whose activities create a higher-than-normal risk of contact with electrically energized parts of at least 50 volts. Workers face a "higher than normal" risk of contact if they are intentionally exposed to energized parts, whether they are classified as "electrical workers" or not.

Supervision will confirm that energized electrical conductors and circuit parts are in an electrically safe work condition (ESWC) before performing work when the following conditions exist:

- The worker is within the Limited Approach Boundary
- The worker interacts with equipment where conductors or circuit parts are not exposed but an increased likelihood of injury from an exposure to an arc flash hazard exists.

Workers will lock, tag, and try conductors and parts of electrical equipment that have been de-energized in accordance with the Hazardous Energy Control (LOTO) requirements of this Project EHS Plan prior to performing work.

Workers will utilize ground fault protection for all temporary wiring installations.
GFCIs will be used on 120 volt, 15 and 20 amp single phase circuits as specified below:

- In damp or wet (standing water) work areas
- Outdoors
- Industrial, maintenance and or construction field, cord and plug applications
- When using portable, electric hand tools with cord/plug connectors
- For receptacles that are not part of the permanent structure wiring (including extension cords)

Workers may use GFCIs or an assured grounding program for receptacles other than 120 volt, 15, 20, and 30 amps.
GFCIs will be used for all circuits on which portable electrical hand tools are used when an assured grounding program is not in place.
Approved GFCIs will be listed and marked by a recognized testing laboratory or the mark of another government-approved agency.

Extension cords are an acceptable means of extending power provided they do not contribute to overload, are protected from damage, are used with GFCI protection, and are removed when not used.
Extension cords may not be plugged into other extension cords except when allowed by the manufacturer.
Extension cords should be elevated when possible 7' above the walking-working surface, secured with non-metallic straps or hangers to help prevent damage and trip hazards. An option can be to run them along the wall or to secure them with trip strips or molded guards to help prevent damage and minimize tripping hazard potential.

5.15.1 DE-ENERGIZING LIVE PARTS

Exposed energized electrical conductors or circuit parts at 50 volts or greater to which personnel might be exposed will be put into an electrically safe work condition before personnel are exposed to and or work on them unless it can be demonstrated that de-energizing introduces additional or increased hazards or is infeasible due to equipment design or operational limitations.

If de-energized but not locked and tagged out, or if some exposed components are de-energized while others in the same compartment are not, the working area and the parts will be treated as live electrical work and either put into an electrically safe work condition or guarded, except equipment with a cord and plug that is under the direct control of the worker performing the work.

5.15.2 Work on Exposed Energized Electrical Parts

Only authorized persons will work on electric circuit parts or equipment that have not been de-energized. Workers who work on or near exposed energized electrical parts of 50 volts or more will comply with OSHA regulations 29CFR1920 Subpart S—1920.269 and NFPA 70E (2024) or applicable state codes.

When working on exposed electrical conductors or circuit parts that are or might become energized, it can be demonstrated that de-energizing introduces additional or increased hazards or is infeasible due to equipment design or operational limitations for reasons indicated in Section 130.2(A) NFPA 70E (2024), and lockout/tagout devices cannot be applied, then Sections 130.2(B) through 130.5 of NFPA 70E (2024) will apply to the work.
An electrical hazard risk assessment will be performed by qualified persons before work is started on or near exposed energized electrical conductors or circuit parts or where an electrical hazard exists, such as provided in Annex F of NFPA 70E (2024).

A shock risk assessment, as specified in Section 130.4, NFPA 70E (2024) , will be performed by qualified persons to determine the voltage to which personnel will be exposed, boundary requirements, and the PPE necessary to minimize the possibility of electrical shock to

personnel. Approach boundaries for shock hazards are provided in NFPA 70E (2024) Table 130.4(E)(a) & Table 130.4(E)(b) Approach Boundaries to Energized Electrical Equipment.

An arc flash risk assessment conducted by an electrical engineer, as specified in Section 130.5, NFPA 70E (2024), and per IEEE 1584 will be performed, as required. The analysis will determine the arc flash boundary, the incident energy at the working distance, and the PPE that personnel within the Arc Flash Protection Boundary shall use:

5.15.3 Selection of PPE when required for various tasks

Where selected instead of the incident energy analysis of 130.5(C)(1), Table 130.7(C)(7)(A)/(b) and Table 130.7(C)(15)(B) will be used to determine the arc flash PPE category and requirements for the use of rubber insulating gloves and insulated and insulating hand tools for a task. The assumed maximum short-circuit current capacities and maximum fault clearing times for various tasks are also listed in these tables for functions not listed, or for power systems with greater than the assumed maximum short-circuit current capacity or with longer than the assumed maximum fault clearing times, an incident energy analysis will be required in accordance with 130.5(C)(1) of NFPA70E (2024). Table 130.7(C)(15)(c) lists the requirements for protective clothing and other protective equipment based on Arc flash PPE categories 1 through 4.

5.15.4 Energized Electrical Work Permit

An approved EWP will be required when working within the restricted approach boundary, or when increased likelihood of injury from an exposure to arc flash exists.
The EWP is not required to:

- Perform testing, trouble shooting, and voltage measuring and zero energy checks for isolated systems or components.
- Installation of safety barriers where the risk of electrical shock or burn is unlikely.
-

Applicable PPE will still be required to protect those working inside the arc flash boundary. EWPs will be developed for only the time necessary to complete the work — typically no more than a week, and should never exceed a 30-day period. A new EWP will be processed if the permit expires before work is completed.

5.15.5 Protective Clothing

The electrical system will be analyzed to determine the appropriate category of PPE. Once this has been determined, personnel will maintain and use the PPE.

- Protective equipment will be maintained in a safe, reliable condition.
- Protective equipment will be stored and used according to the manufacturer's recommendation.

- Protective items that become contaminated with grease, oil, or flammable liquids and combustible materials will not be used.
- If protective equipment certification expires (gloves, mats, and hot sticks) the equipment will be tagged and removed from service until recertified.

Standards for PPE will conform to Table 130.7(C)(15)(c) of NFPA 70E (2024).

Workers exposed to potential arc flash hazards will not wear clothing containing meltable material, such as polyester or nylon, at or inside the arc flash protection boundary unless the clothing meets the requirements of ASTM 1506 or local in-country requirements / authority have jurisdiction. Incidental amounts of elastic in non-melting fabric underwear or socks will be permitted.
Hair and beard nets, ear warmers, and head covers will not be worn unless they are made of arc-rated material.
If the back of a worker's head is inside the arc flash boundary, it will be appropriately protected with an arc rated hood or balaclava depending on the incident energy.
Leather gloves used for arc flash protection <10 cal will be made entirely of .03 inches / .7 mm thick leather. If lined they will be lined with non-flammable / non melting fabric. Greater than 10 cal protection requires voltage rated rubber gloves with leather protectors or arc rated gloves.

Protective Clothing

Workers within the arc flash protection boundary will wear arc rated protective clothing and other PPE in accordance with the findings of the arc flash risk assessment. Protected areas may include the following:

- Head, face, neck, and chin
- Eyes and Ears
- Full body
- Hand, arm foot and leg

Protective Clothing and PPE (Category 1)

Arc-rated clothing, minimum arc rating of 4 cal/cm2:

- Arc-rated long-sleeve shirt and pants or arc-rated coverall
- Arc-rated face shield or arc flash suit hood
- Arc-rated jacket, parka, rainwear, or hard hat liner (AN)

Protective Equipment:

- Hard hat
- Safety glasses or safety goggles
- Hearing protection (ear canal inserts)
- Heavy duty leather gloves
- Leather footwear
-

Protective Clothing and PPE (Category 2)

Arc-rated clothing, minimum arc rating of 8 cal/cm2:

- Arc-rated long-sleeve shirt and pants or arc-rated coverall
- Arc-rated flash suit hood or arc-rated face shield and arc-rated balaclava
- Arc-rated jacket, parka, rainwear, or hard hat liner (AN)

Protective Equipment:

- Hard hat
- Safety glasses or safety goggles
- Hearing protection (ear canal inserts)
- Heavy duty leather gloves
- Leather footwear
-

Protective Clothing and PPE (Category 3)

Arc-rated clothing selected so that the system arc rating meets the required minimum arc rating of 25 cal/cm2:

- Arc-rated long-sleeve shirt (AR)
- Arc-rated pants (AR)
- Arc-rated coverall (AR)
- Arc-rated arc flash suit jacket
- Arc-rated arc flash suit pants
- Arc-rated arc flash suit hood
- Arc-rated gloves
- Arc-rated jacket, parka, rainwear, or hard hat liner (AN)

Protective Equipment:

- Hard hat
- Safety glasses or safety goggles
- Hearing protection (ear canal inserts)
- Leather footwear
-

Protective Clothing and PPE (Category 4)

Arc-rated clothing selected so that the system arc rating meets the required minimum arc rating of 40 cal/cm2:

- Arc-rated long-sleeve shirt
- Arc-rated pants
- Arc-rated coverall (AR)
- Arc-rated arc flash suit jacket
- Arc-rated arc flash suit pants
- Arc-rated arc flash suit hood
- Arc-rated gloves
- Arc-rated jacket, parka, rainwear, or hard hat liner (AN)

Protective Equipment:

- Hard hat
- Safety glasses or safety goggles
- Hearing protection (ear canal inserts)
- Leather footwear

Protective Equipment

Item(s) to be used will be inspected before each use to verify the item is in satisfactory condition and has been tested as required.
Rubber protective equipment (gloves) will be inspected, sterilized, and tested at 6 month intervals.
Hot sticks and voltage rated mats will be tested if they are damaged in any way and or at least every 12 months and date stamped at that time.
Voltage-rated tools will be inspected for defects and surface contamination (such as moisture) before each use. Insulated tools alone will not be relied upon for complete protection.
Workers will be briefed on the use of insulating rubber gloves prior to use. The Checklist for Insulating Rubber Gloves includes basic outline for initial briefings and on the job training.
An AED (automatic external defibrillator) and trained personnel shall be available for EWP work and switching crews. AED and CPR refresher training is required every 12 months for those in the stand by observation role. First aid training is required.

5.12.6 Access

Barricades will be used in conjunction with safety signs where it is necessary to prevent or limit worker access to work areas containing live parts. Conductive barricades will not be used where it may cause an electrical hazard. Barricades will be placed no closer than the limited approach or arc flash protection boundary, choosing the one that provides the appropriate level of protection for both hazards.
If signs and barricades do not provide sufficient warning and protection from electrical hazards, an attendant will be stationed to warn and protect workers. The primary duty and responsibility of an attendant will be to prevent unauthorized personnel from entering the area where exposure to an electrical hazard exists. The attendant will remain in the area as long as the potential for hazard exposure exists.

5.12.7 Calculating/ Determining Incident Energy

In addition to the shock risk assessment, an arc flash risk assessment will determine the arc flash protection boundary and the amount of incident energy that could be impressed on a worker as a work task is being performed.

A calculated or computed incident energy analysis will provide an installation-specific analysis of the incident energy that a worker would be exposed if an arc flash incident did occur. This focused information will allow the selection of PPE based on the conditions associated with the task being performed on a specific piece of electrical equipment.
Electrical arc flash hazards will be considered in pre-job planning for work at or beyond the arc flash, as well as limited and restricted approach boundaries. An authorized electrical person will determine arc flash incident energy and arc flash boundaries (using the National Fire

Protection Association [NFPA] 70E standard or Institute of Electrical and Electronics Engineers [IEEE] 1584).
Documents, methods and calculations used to complete arc flash risk assessments will be maintained and readily available to those with a need to review.

All body parts closer to an arc flash hazard than the arc flash boundary will be protected from the potential thermal effects of the hazard. The arc flash boundary will be established at the point where the amount of incident energy that a worker could be exposed to is 1.2 cal/cm2 or greater. The arc flash boundary is the first issue to be determined by an arc flash risk assessment. The arc flash boundary defines the point at which arc-rated PPE is necessary to avoid a second-degree burn. All body parts of a worker are required to be protected.

Workers who operate circuit breakers, electrical disconnect switches, and motor control center controllers with doors closed and all covers in place (not exposed to energized electrical conductors) will wear, as a minimum:

- Non-melting or Untreated Natural Fiber (such as untreated cotton, wool, rayon, or silk, or blends of these materials) Shirt (long sleeve)
- Pants (long)
- Protective Equipment
- Safety glasses or safety goggles (SR)
- Hearing protection (ear canal inserts)
- Heavy duty leather gloves

Arc-rated face shields will be worn at or beyond the arc flash protection boundary when potential arc incident energy is 4 cal/cm2 or greater up to 8 cal/cm (PPE Cat. 1).

Arc-rated flash suit hood or arc-rated face shield with arc rated balaclava will be worn at or inside the arc flash protection boundary when potential arc incident energy is 8 cal/cm2 or greater, up to 25 cal/cm (PPE Cat. 2)

Arc-rated flash suit hood will be worn at or inside the arc flash protection boundary when potential arc incident energy is 25 cal/cm2 or greater (PPE Cat. 3 and 4).

Incident energy exceeding 40 cal/cm2 will require either engineering controls to reduce the exposure level to 40 cal/cm2 or less. Standard arc flash PPE alone is not considered adequate protection for a worker exposed to incident energy levels greater than 40 cal/cm2.

If the calculations indicate that incident energy is 40 cal/cm2 or greater, the pressure wave might be hazardous. When pressure waves may be hazardous the work will only be performed when engineering controls to reduce the exposure level to 40 cal/cm2 or less are implemented or an ESWC is established. In some instances, creating an ESWC might require some exposure to a thermal hazard exceeding 40 cal/cm2. Processes, such as mechanical or electrically controlled remote switching equipment, will be implemented in order to reduce the risk to an acceptable level.

An authorized backup person will be required for work on or near energized components. Working alone on energized circuits or components is prohibited. The backup person observes the worker to ensure that clearances are maintained and will perform electrical emergency rescue. The authorized backup person will be CPR and AED certified, trained in emergency procedures and rescue methods and it is recommended that they also be trained in first aid. The authorized backup person will know where the electrical disconnect is located and should be equipped with a sheppard's hook or nonconductive tool that can be used to free a person from an energized circuit should it become necessary.

5.16 WORKING NEAR OVERHEAD POWER LINE

All lines will be considered energized unless the authority or utility Company owning the lines indicates in writing that they are not energized and that the lines are grounded at the point of operation.

A Working Near Energized Power Lines Permit will be approved and issued before work commences within 33 feet (10.1 meters) of an energized overhead power line. If the permit to work process is in use, a Permit to Work is required in addition to the Working Near Energized Power Lines Permit.

The Electrical Superintendent will sign the Working Near Energized Power Lines Permit allowing work to proceed within the 33 feet (10.1 meter) distance to an overhead power line.
The Electrical Superintendent will verify that the authority has been granted to allow work within the 33 feet (10.2 meter) limit of overhead power lines.
If the work cannot be performed in a safe manner, the permit will not be issued

5.16.1 WORKING DISTANCES

Cranes

Supervision will assign a trained spotter when moving a crane and there is a potential for any part of the crane (or load) to come within 20 feet (6.1 meters) of an energized power line
Cranes will not be assembled, disassembled, or operated when there is the potential for any part of the crane to come within "x" feet of an energized power line as follows:

- Up to 350 kV x = 20 feet (6.1 meters)
- 351 kV to 1000 kV x = 50 feet (15.2 meters)
- Over 1000 kV x = the distance determined by the utility owner, or a registered professional engineer who is a Qualified Person with respect to electrical power transmission and distribution.

Equipment Other Than Cranes

No equipment will be erected or operated under any circumstances when any part of the equipment is closer than 10 feet (3.1 meters) of energized electrical distribution lines rated 50 kV or below, unless:

- The lines have been de-energized and are grounded at the point of work, or

- Insulating barriers, that are not part of the equipment, have been erected.

For lines rated over 50 kV, the minimum clearance between lines and any part of the equipment or load will be 10 feet (3.1 meters), plus 0.4 inches (1.02 centimeters) for each kilovolt over 50 kV or twice the length of the line insulator.

5.17 HAZARDOUS ENERGY CONTROL (LOCKOUT/ TAGOUT)

Before starting work, hazardous energy control operations are assessed using the JHA or equivalent. Completion of a JHA and associated risk assessment is required for this.

The JHA or equivalent will address the following (when applicable):

- Scope of work to be performed
- Coordination with high-voltage electrical distribution isolation with the utility having jurisdiction to isolate circuits, lock/tag/install grounding cables
- Coordination with authority having jurisdiction of any fire protection systems which will be impaired due to the de-energization and isolation
- Coordination with other work groups affected by the de-energization and isolation
- Identification of boundaries including the energy sources or hazardous materials that will be isolated

Use machine-specific Energy Control Procedures (ECP), controlled documents, drawings and field walk downs to identify equipment or system energy sources when establishing boundaries. If used, drawings and documents will always be verified with a field walk down.

Authorized workers control all hazardous energy sources and stored energy sources prior to working on the equipment or system. Work on energized systems or equipment is prohibited except in circumstances where such work will be performed "live" (such as testing and troubleshooting).
If an isolating device cannot be locked, then protection equivalent to that provided by locks will be established and a tag(s) will be used to ensure that the equivalent protection is maintained.

Examples of protection equivalent to locks and tags that prevent a system from being energized include:

- Removing an isolating circuit element or fuse
- Blocking switch controls
- Opening extra circuit disconnects

When a lock cannot be applied along with a tag, the tagout devices, including their means of attachment, are durable and substantial enough to prevent inadvertent or accidental removal. Tagout attachment devices are of a non-reusable type, attachable by hand, self-

locking, and non-releasable with a minimum unlocking strength of not less than 50 pounds force (222.4 newtons) and having the general design and basic characteristics of being at least equivalent to a one-piece, all-environment-tolerant nylon cable tie.

Equipment or components with locks or tags attached are not removed from their installed location. If a locked/tagged component is removed (such as during demolition, replacement, or rework), the isolation boundaries are adjusted so that any locks and tags may be properly cleared from the component that is to be removed.

Lockout devices are substantial enough to prevent removal without excessive force (bolt cutters) or unusual techniques (metal cutting tools).

Authorized workers are supplied with uniquely identified locks and associated hardware. Only single-keyed locks are authorized for lockout. The worker maintains control of the key(s) for any lock(s) used.

Each authorized worker installs personal lock(s) and Danger Tag(s) before starting work and removes them when leaving that work assignment. No authorized worker performs activities under the provisions of another's lock and tag. Should it become necessary to remove an authorized worker's lock and tag due to absence from the site, the Removal of Authorized Worker Lock and Tag When Absent From Site process is used.

A safe condition check is performed by the authorized worker before commencing work on the equipment or system.
No authorized worker will install a lock and tag on any system without notifying the controlling organization, unless a simple lockout/tagout is used, or the JHA or permit to work specifically addresses this issue.

5.17.1 Training

Affected workers receive initial orientation that includes the following elements:

- Instruction on the definition of an Affected Worker and Authorized Worker
- Instruction that the installation and removal of a lock and tag is conducted only with proper authorization as required herein
- Instruction on limitations of tagout when a lock cannot be used
- Discussion of the disciplinary actions that may result from violation of requirements specified herein

Authorized Workers receive training that includes the following elements:

- All elements in the affected worker orientation
- The Hazardous Energy Control progra
- Limitations of just "tagging out" a component (compared to locking and tagging)
- Methods for recognizing types and magnitude of hazards existing in their work area
- Means to control and isolate these hazards

- Proper performance to determine the safety of the area where the work is to be performed, as identified herein

Project Site LOTO Administrator is responsible for:

- All elements in the affected worker orientation
- All elements in the authorized worker training
- Application of the Hazardous Energy Control requirements
- Facility systems, controls, and configuration processes appropriate to the work involving the lockout/tagout

Refresher training in the provisions of these requirements are presented to authorized and affected workers annually.
Projects may elect to use a challenge test in lieu of a formal lesson plan.
Workers are provided appropriate retraining whenever there is a significant change in work assignment, a new hazard is identified, or there is a revision to these requirements.

5.18 MOTOR VEHICLE OPERATIONS

These requirements apply to all personnel operating a motor vehicle (Company owned/leased or personally owned vehicle) to conduct Company business. They do not include the use of personal vehicles for daily commute to/from work.

Motor Vehicles include, but are not limited to the following:

- Automobiles
- Trucks less than 2 tons GVW
- 4-wheelers or Quads (“Mules”)

** Golf Carts are not authorized for use at Gridworks Sites*

Drivers will not drive for more than 11 consecutive hours.

If Drivers will be expected to drive for extended periods of time (>6 hours), driving fatigue will be evaluated and minimized. Local or Client regulations regarding maximum driving time limits will be followed. In order to avoid driving fatigue, Company sites and offices shall consider the following:

- Work Schedule
- Breaks and long hour driving avoidance
- Driving at night
- Flexible alternatives to manage fatigue, such as overnight stay
- Rest before driving
- Educating drivers about early signs of fatigue and effective strategies to manage fatigue

A hazard/risk assessment associated with the travel route will be conducted for remote locations where security risks are an issue. The risk assessment will include, but is not limited to:

- Road construction
- Traffic conditions
- Road surface
- Weather
- Altitude
- Community impact
- Security concerns

Company vehicles will be equipped with appropriate emergency equipment in the event the driver experiences mechanical difficulty, loss or shifting load or a crash on the road. Emergency equipment will include, but is not limited to:

- First-Aid kit
- Flashlight
- Reflective safety vest
- Fire extinguisher
- Reflective triangles / flares

Vehicles will be equipped with emergency warning devices and equipment, and drivers will be instructed in the correct placement of these devices around the disabled vehicle.

Drivers will not alter Company-owned vehicles in any manner.

Company owned/leased vehicles will be inspected on a regular basis in accordance with the vehicle manufacture's recommendations, regulatory requirements and recognized standard practices

The Driver will visually check the vehicle prior to each use.

Drivers and passengers will utilize safety belts at all times when the vehicle is in motion.

Safety belts must be adjusted and used properly to protect the occupants. Users should consult the vehicle manual on the proper method of use and adjustment.

Drivers will minimize distractions that may impact their ability to safely operate the vehicle.

Distractions include, but are not limited to:

- Mobile Devices
- Passengers
- Eating and drinking
- Vehicle features such as entertainment, climate, navigation systems, etc.

- Events and objects outside the vehicle

Hands-free may be used by the vehicle operator, with discretion, depending on driving conditions.

Hands-free Mobile Device use for long or extended phone conversations while driving is discouraged.

When Mobile Devices are permitted for use at Projects, personal use of Mobile Devices will be restricted to designated break areas.

Drivers will visually check their vehicle prior to each use. When defects are reported, the vehicle shall be repaired by a qualified automotive service technician. Safety-related defects shall be repaired before the vehicle is placed back in service with appropriate records maintained

5.19 WILDLIFE

Wildlife refers to undomesticated animal species but has come to include all organisms that grow or live wild in an area without being introduced by humans. Wildlife was also synonymous with game: those birds and mammals hunted for sport. Wildlife can be found in all ecosystems. Deserts, plains, grasslands, woodlands, forests, and other areas, including the most developed urban areas, all have distinct forms of wildlife. While the term in popular culture usually refers to animals that are untouched by human factors, most scientists agree that much wildlife is affected by human activities. Some wildlife threaten human safety, health, property, and quality of life. However, many wild animals, even the dangerous ones, have value to human beings. This value might be economic, educational, or emotional in nature.

- If you observe wildlife, you should give the animal space.
- Do not crowd wild animals, if they feel trapped, they will defend themselves
- Do not touch or catch the wildlife.
    - Watch hand placement as spiders and other stinging insect tend to be under pallets and other structures.
    - Snakes tend to be under pallets and wooden items and will bite attempting to pick up these items.
- You should not injure or kill any wildlife
    - Any wildlife observed will be considered protected.
- If you locate any wild including snakes in your work area that may need to be removed, contact the safety department and they will determine if the animals will be removed.

    - Do not throw objects at animals, molest them or attempt to catch them
- Some circumstances will require leaving animals alone and allowing them to move along at their own.
- If bitten or attacked notify safety immediately
    - No matter the size of a bite or sting they are considered an injury and must be reported to the Safety Department.

Common wildlife that could be encountered in the Galveston County Area includes:

- Skunks
- Raccoons
- Opossums
- Coyotes
- Snakes

Skunks

When you encounter a skunk, you should remain calm and back away slowly and steadily. If the skunk hasn't sprayed yet, it may raise its tail, stomp its feet, or stand on its hind legs. You should avoid panicking, turning your back, making sudden movements, or running. Instead, try to put about 10 feet between yourself and the skunk so you're out of range of its spray.

Raccoons

Raccoons are nocturnal animals, so encounters during the day are rare. IF you encounter a racoon, keep your distance an walk away. If they do not go away, animal control companies shall be called to assist.

Opposums

Opossums are generally docile and non-aggressive, and prefer to avoid confrontation. If you encounter one, just leave it alone and they will run away

Coyote

Coyotes are a challenge to many communities within the Galveston County. Coyotes rarely attach people, but to reduce the chance of encouters with them always secure garbage and do not leave food laying in the work areas. Like many other species already mentioned, leftover foods is the main reason that attracts these animals. If you encounter one of them, just try to scare them away by beig as loud as possible while waiving your arms. Do not run away or turn your back to them.

Snakes

Several types of venomous snakes can be found in the area. Timber rattlesnakes, copperheads, and cottonmouths are all found these these areas. If you encounter a snake you should immediately distance yourself from the snake. If possible keep visual contact on the snake, and call a **snake control** expert to remove the snake from your home or business. Project may contact Snake Removal League City at 832-789-4194.

Attachments:

1. Emergency Response Plan
2. Heat Stress Control Plam
3. Gridworks Hurricane Preparedness Plan
4. Incident Management Forms

EXHIBIT E

OPERATING PERSONNEL TRAINING PROGRAM

1. GENERAL

Contractor shall conduct Site-specific training for Owner assigned Operating Personnel for the Project. The training course for the Project shall be conducted two times to accommodate two shifts of Operating Personnel. Each of the two groups shall receive training in alternate weeks. Training specific to the Interconnection Substation is limited to a one-time event based upon an agreed data and time.

Each course shall be conducted during a standard 8-hour day and shall take 1 day. Classroom training will be augmented by field reinforcement of the instruction topics. Each classroom training session shall be instructed in an air-conditioned classroom with the appropriate visual aids. The training program will cover all proper aspects of knowledge required by the individual disciplines to allow them to competently operate, troubleshoot, and maintain all Project process and utility systems.

Owner shall advise one month in advance of each training program course of the number of Operating Personnel attending each session. A training program sign-up sheet for the Project shall document Owner's personnel attendance and Contractor's instructor(s). Contractor will submit its proposed training schedule, training course outline and training manual for Owner's review in accordance with the provisions of this Agreement.

Owner shall ensure that all Owner Operating Personnel attendees (i) are adequately pre-trained in all safety aspects of an industrial electrical generation facility as required by Governmental Authorities and Applicable Laws and (ii) shall arrive at the classroom with all appropriate personal protective equipment required for field training at the Site.

2. SITE-SPECIFIC TRAINING

The Operating Personnel training program will encompass on-Site training for the Project.

2.1. Owner Responsibility

Provide training facilities for the Site which present an environment conducive to learning (heat, light, noise level and air conditioned and be furnished with an LCD projector or equivalent screen, white boards and markers and podium). Each Operating Personnel attendee's desk/table shall afford working space for training manuals and the associated C size drawings.

2.2. Contractor Responsibility

Contractor shall:

2.2.1. Prepare all classroom and training materials.

2.2.2. Provide hard and soft copies of training materials in sufficient quantities to allow all participants to have their own set of documents.

2.2.3. Schedule and coordinate all classroom-training courses.

2.2.4. Provide instruction, lesson plans, final exam, review and field instruction.

2.2.5. Display larger drawings of the general arrangements and plot plans for orientation and discussion.

2.3. Training Topics

2.3.1. PV Systems

Contractor shall describe the process and discuss the principles of operation for the PV Power Plant.

Contractor shall provide experienced instructors to conduct its training program for the PV Power Plant, which shall consist of classroom sessions bolstered by system walk downs and examinations. The course curriculum for the PV Power Plant shall include design considerations. The following outline of topics shall typically be covered:

2.3.1.1. Introduction

2.3.1.2. Personnel safety

2.3.1.3. PV systems and ESS

2.3.1.4. Utilities

2.3.1.5. Commissioning and startup

2.3.1.6. SCADA

2.3.2. Interconnection Substation

2.3.2.1. Substation automation

2.4. Lesson Format

Each session shall typically include the following information:

- Lesson objectives
- Design basis and list of resources
- System overview with drawings
- Component description with supporting documentation (figures, tables, graphs, etc.)

2.5. Lesson Content

2.5.1. Lesson objectives - major information the Operating Personnel attendee is expected to learn and retain from the lesson shall be presented. Referenced materials utilized in the training session shall be displayed. Listed references shall include page numbers in manuals, diagram and/or drawing numbers, and appropriate procedure of section numbers.

2.5.2. System overview with drawings - this section will include a brief description of the intended use of the system.

2.5.3. Component description with supporting documentation - this section will include information on the major components in the system. Tables, figures, drawings and design details will also be provided.

2.5.4. Principles of operation, including start-up and shutdown procedures - various operational modes of the system and documents will be presented, including:

- operating philosophy
- start-up
- normal operation
- normal and emergency shutdown
- recognizing and handling abnormal operating conditions (troubleshooting)

2.5.5. Walk-downs - walk-downs will be conducted to familiarize the students with the physical location and appearance of equipment and to clarify equipment features, controls, and displays.

2.5.6. Examinations - Contractor will provide a "final" exam at the end of each session to test the knowledge of each Operating Personnel attendee. Contractor will provide to the Owner the results of this examination. Each Operating Personnel attendee will receive a certificate indicating their attendance of the training program. A complete list of attendees will be provided by Contractor to Owner for training tracking purposes for the Project.

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: $ _____

Check Payable To: _____

Exceptions

This document does not affect any of the following:
(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
Date(s) of waiver and release:_____
Amount(s) of unpaid progress payment(s): $_____
(4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: $ _____

Check Payable To: _____

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: $

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

$_____

Exceptions

This document does not affect any of the following:
(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the Amount of: $_____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

EXHIBIT F

LIEN WAIVER AND RELEASES

EXHIBIT F-1

WAIVER AND RELEASE UPON FINAL PAYMENT OF CONTRACTOR

Each Contractor's Invoice shall be reasonably detailed and shall be accompanied by reasonable supporting documentation with respect to the Work completed which shall include a lien waiver upon final payment in the following form:

FINAL PAYMENT AFFIDAVIT, WAIVER, AND RELEASE[1]

Project Description: The engineering, procurement, and construction of a 100 MW Minimum Gross Capacity photovoltaic ("**PV**") power plant ("**PV Power Plant**") and the facilities and equipment for the PV Power Plant, and the 30 MW battery storage system ("**BESS**") that are owned by **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation ("**Owner**") and located between (and including) the Interconnection Switchgear which is designed, engineered, procured and constructed by Owner and the point where the PV Power Plant, BESS and Interconnection Switchgear are physically and electrically interconnected with the applicable electric system ("**Transmission Provider's Interconnection Facilities**") (collectively the "**Project**") to be owned by Owner, and the designing, installation, testing and commissioning of the PV Power Plant, pursuant to the terms of that certain Engineering, Procurement, and Construction Agreement, dated October 29, 2024 (the "**Agreement**") between **GRIDWORKS INC.**, and Owner.

In accordance with Section 6.6 of the Agreement and for the purpose of Final Completion of the Project, the undersigned, for and in consideration of the payments made to it by Owner for the Work performed in connection with the Project pursuant to the Agreement, hereby certifies as follows:

1. The undersigned has requested final payment, in full for all deliveries of the Equipment and for all Work performed in connection with the Project ("**Final Payment**") and, upon receipt of such Final Payment, the undersigned hereby warrants that there are no outstanding claims for payment by the undersigned or any of the undersigned's Subcontractors against Owner in connection with the Project, except as specifically enumerated on the Schedule attached to this Final Payment Affidavit, Waiver and Release ("**Final Payment Release**").

2. Upon receipt of Final Payment, the undersigned does hereby waive, release, and quitclaim in favor of Owner, its Affiliates, each and every Person acquiring title to and/or making a loan on the Project, and any and all of their successors and assignees, all rights that presently exist or hereafter may accrue to the undersigned to assert a lien or encumbrance upon the land, improvements, labor, materials, equipment and Work comprising the Project or relating to the Project.

3. Upon receipt of Final Payment, the undersigned does hereby forever release, waive, and discharge the Project and Owner and its Affiliates from any and all liens, right to establish a lien, causes of action, suits, debts, accounts, damages, encumbrances, judgments, claims, and demands which the undersigned and/or its successor and/or assignees ever had, now have or ever will have against Owner, its Affiliates and the Project, by reason of delivery of the Equipment and performance of Work in connection with the Project for the Equipment delivered and Work performed **[**, and the undersigned hereby agrees to indemnify, defend and hold Owner and its Affiliates, and their respective directors, officers and employees harmless from any and all damages, costs, expenses, demands, suits, and legal fees asserted or awarded, directly or indirectly relating to any of the foregoing claims or liens so released**]**[2].

4. The undersigned has not assigned any claim against Owner or the Project, nor

[1] To be delivered by Contractor following receipt of Final Payment under Section 6.6.

[2] Wording in square brackets to be included when waiver and release is to be executed by subcontractors. Wording in square brackets to be removed when waiver and release is to be executed by Contractor.

any lien or right to perfect a lien against Owner, the Site or the Project, and the undersigned has the right, power, and authority to execute this Final Payment Release.

5. The undersigned warrants that all laborers and Subcontractors employed by it, all Suppliers or materialmen from which it has acquired material or equipment incorporated into the Work or the Project, and any lien or bond claimant relating to the undersigned's work has been paid in full, and that none of such laborers, Subcontractors, Suppliers, materialmen or claimants has any claim, demand or lien against Owner, the Work, the Site, the Equipment or the Project. The undersigned further warrants that all applicable taxes, fees, and benefits relating directly or indirectly to the undersigned's work have been paid in full, except for those contested in good faith which do not affect the Project or Owner.

6. No security interest has been given or executed by the undersigned for or in connection with any materials, equipment, appliances, machinery, fixtures, or furnishings placed upon or installed on the Project or the Site.

7. This Final Payment Release shall be an independent covenant, subject to the foregoing exceptions and clarifications, and shall operate and be effective with respect to Work performed and on the Equipment furnished, on the Project. This Final Payment Release shall survive Final Completion of the Project, as defined, and to the extent provided for, in the Agreement.

This Final Payment Affidavit, Waiver and Release is effective upon receipt by the undersigned of Final Payment from Owner. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, this Final Payment Release has been executed on this ____ day of_____,_____.

GRIDWORKS INC.

By: _____

Name: _____

Its: _____

EXHIBIT F-2

WAIVER AND RELEASE UPON PROGRESS PAYMENT OF CONTRACTOR

Each Contractor's Invoice shall be reasonably detailed and shall be accompanied by reasonable supporting documentation with respect to the Work completed which shall include a lien waiver upon progress payment in the following form:

PROGRESS AFFIDAVIT, WAIVER, AND RELEASE

Project Description: The engineering, procurement, and construction of a 100 MW Minimum Gross Capacity photovoltaic ("**PV**") power plant ("**PV Power Plant**") and the facilities and equipment for the PV Power Plant, and the 30 MW battery storage system ("**BESS**") that are owned by PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (**"Owner"**) and located between (and including) the Interconnection Switchgear which is designed, engineered, procured and constructed by Owner and the point where the PV Power Plant, BESS and Interconnection Switchgear are physically and electrically interconnected with the applicable electric system ("**Transmission Provider's Interconnection Facilities**") (collectively the "**Project**") to be owned by Owner, and the designing, installation, testing and commissioning of the Project, pursuant to the terms of that certain Engineering, Procurement, and Construction Agreement, dated October 29, 2024 (the "**Agreement**") between GRIDWORKS INC. ("**Contractor**"), and Owner.

In accordance with Section 6.3 of the Agreement, the undersigned, for and in consideration of the payments made to it by Owner for the Work completed pursuant to the Agreement, hereby certifies as follows:

1. Upon receipt of the sum of $_____, the undersigned will have received payment in full for all deliveries of the Equipment and for all Work performed in connection with the Project through the____day of_____,_____as specified in the relevant invoice, and, except for receipt of said payment and as an inducement to Owner to make same, the undersigned hereby affirms that there are no outstanding claims by the undersigned or any of the undersigned's Subcontractors against Owner in connection with the Project, except as specifically enumerated on the Schedule attached to this Progress Affidavit, Waiver, and Release ("**Progress Release**").

2. The undersigned does hereby waive, release, and quitclaim in favor of Owner, its Affiliates, each and every Person acquiring title to and/or making a loan on the Project, and any and all of their successors and assignees, all rights that presently exist or hereafter may accrue to the undersigned to assert a lien or encumbrance upon the land, improvements, labor, materials, equipment and Work comprising the Project or relating to the Project furnished through the__day of__,_____.

3. The undersigned does hereby forever release, waive, and discharge the Project and Owner and its Affiliates from any and all liens, right to establish a lien, causes of action, suits, debts, accounts, damages, encumbrances, judgments, claims, and demands which the undersigned and/or its successor and/or assignees ever had, now have or ever will have against Owner, its Affiliates and the Project, by reason of delivery of the Equipment and performance of Work in connection with the Project, for Project Hardware delivered and Work performed through the_____day of_____.

[and the undersigned hereby agrees to indemnify, defend and hold Owner and its Affiliates, and their respective directors, officers and employees harmless from any and all damages, costs, expenses, demands, suits, and legal fees asserted or awarded, directly or indirectly relating to any of the foregoing claims or liens by any party for Work which relates to that which was performed, by or for the undersigned, through the _____day of_____, 20][3].

4. The undersigned has not assigned any claim against Owner or the Project, nor any lien or right to perfect a lien against Owner or the Project, and the undersigned has the right, power, and authority to execute this Progress Release.

5. The undersigned warrants that all laborers and Subcontractors employed by it, all Suppliers or materialmen from which it has acquired material or equipment incorporated into the Work or the Project, and that any lien or bond claimant relating to the undersigned's work has been paid in full, and that none of such laborers, Subcontractors, Suppliers, materialmen or claimants has any claim, demand, or lien against Owner, the Work, the Site, the Equipment or the Project through the__day of__, 20 , of Work performed on the Project except as described in the attached document. The undersigned further warrants that all applicable taxes, fees, and benefits relating directly or indirectly to the undersigned's work have been paid in full to the extent due and payable as of the date of this Progress Release, except for those contested in good faith.

6. No security interest has been given or executed by the undersigned for or in connection with any materials, equipment, appliances, machinery, fixtures, or furnishings placed upon or installed on the Project or the Site.

7. This Progress Release, subject to the foregoing exceptions and clarifications, shall be an independent covenant and shall operate and be effective with respect to Work performed and on Project Hardware furnished, through the_____day of_____, 20 , on the Project.

Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

[3] Wording in square brackets to be included when waiver and release is to be executed by subcontractors. Wording in square brackets to be removed when waiver and release is to be executed by Contractor.

IN WITNESS WHEREOF, this Progress Release has been executed on this_____day of _____,_____.

GRIDWORKS INC.

By: _____

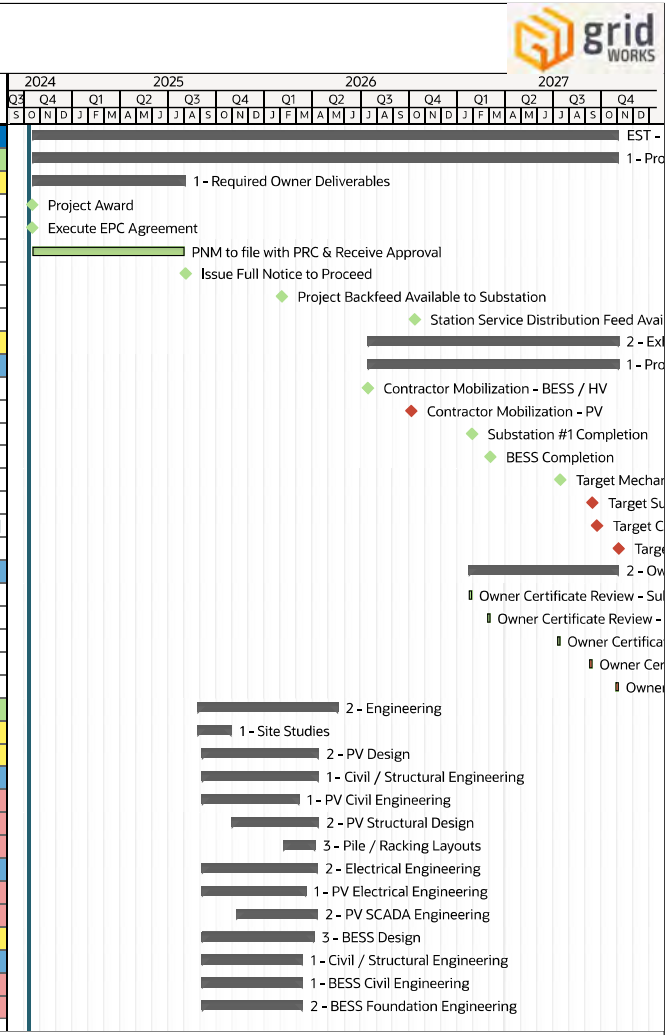
Name: _____

Its: _____

EST - 24129 Sunbelt - PNM - 100MW PV - 100MW BESS

WBS Proposal Layout

ID	Name	Planned Duration	Start	Finish
EST - 24129 - Sunbelt - PNM - 100MW PV - 100MW BESS		770.0d	15-Oct-24	02-Nov-27
1 - Project Milestones		770.0d	15-Oct-24	02-Nov-27
1 - Required Owner Deliverables		201.0d	15-Oct-24	01-Aug-25
GW - 1000	Project Award	0.0d	15-Oct-24 C	
GW - 1003	Execute EPC Agreement	0.0d		15-Oct-24
GW - 1003.2	PNM to file with PRC & Receive Approval	198.0d	16-Oct-24	31-Jul-25
GW - 1003.1	Issue Full Notice to Proceed	0.0d		01-Aug-25
GW - 1005	Project Backfeed Available to Substation	0.0d	02-Feb-26 C	
GW - 1005.1	Station Service Distribution Feed Available by Owner	0.0d	10-Oct-26	
2 - Exhibit Milestones		333.0d	13-Jul-26	02-Nov-27
1 - Project Milestones		397.0d	13-Jul-26	02-Nov-27
GW - 1100	Contractor Mobilization - BESS / HV	0.0d	13-Jul-26 C	
GW - 1101	Contractor Mobilization - PV	0.0d	05-Oct-26 C	
GW - 1202	Substation #1 Completion	0.0d		28-Jan-27
GW - 1206	BESS Completion	0.0d		01-Mar-27
GW - 1207	Target Mechanical Completion - PV	0.0d		13-Jul-27
GW - 1208	Target Substantial Completion - PV & BESS	0.0d		13-Sep-27
GW - 1209	Target Commercial Operaton Date (COD) - PV & BESS	0.0d		20-Sep-27 C
GW - 1210	Target Final Completion - Project	0.0d		02-Nov-27
2 - Owner Certificate Reviews		197.0d	22-Jan-27	02-Nov-27
GW - 1202.1	Owner Certificate Review - Substation #1 Completion	5.0d	22-Jan-27	28-Jan-27
GW - 1206.1	Owner Certificate Review - BESS Completion	5.0d	23-Feb-27	01-Mar-27
GW - 1207.1	Owner Certificate Review - Project Mechanical Completion - PV & BESS	5.0d	07-Jul-27	13-Jul-27
GW - 1208.1	Owner Certificate Review - Project Substantial Completion - PV & BESS	5.0d	07-Sep-27	13-Sep-27
GW - 1210.1	Owner Certificate Review - Project Final Completion	5.0d	27-Oct-27	02-Nov-27
2 - Engineering		184.0d	25-Aug-25	18-May-26
1 - Site Studies		46.0d	25-Aug-25	28-Oct-25
2 - PV Design		152.0d	02-Sep-25	10-Apr-26
1 - Civil / Structural Engineering		152.0d	02-Sep-25	10-Apr-26
1 - PV Civil Engineering		125.0d	02-Sep-25	04-Mar-26
2 - PV Structural Design		112.0d	29-Oct-25	10-Apr-26
3 - Pile / Racking Layouts		42.0d	04-Feb-26	03-Apr-26
2 - Electrical Engineering		150.0d	02-Sep-25	08-Apr-26
1 - PV Electrical Engineering		135.0d	02-Sep-25	18-Mar-26
2 - PV SCADA Engineering		105.0d	05-Nov-25	08-Apr-26
3 - BESS Design		145.0d	02-Sep-25	01-Apr-26
1 - Civil / Structural Engineering		130.0d	02-Sep-25	11-Mar-26
1 - BESS Civil Engineering		130.0d	02-Sep-25	11-Mar-26
2 - BESS Foundation Engineering		130.0d	02-Sep-25	11-Mar-26



Current
Progress
Critical
Milestones
Summary

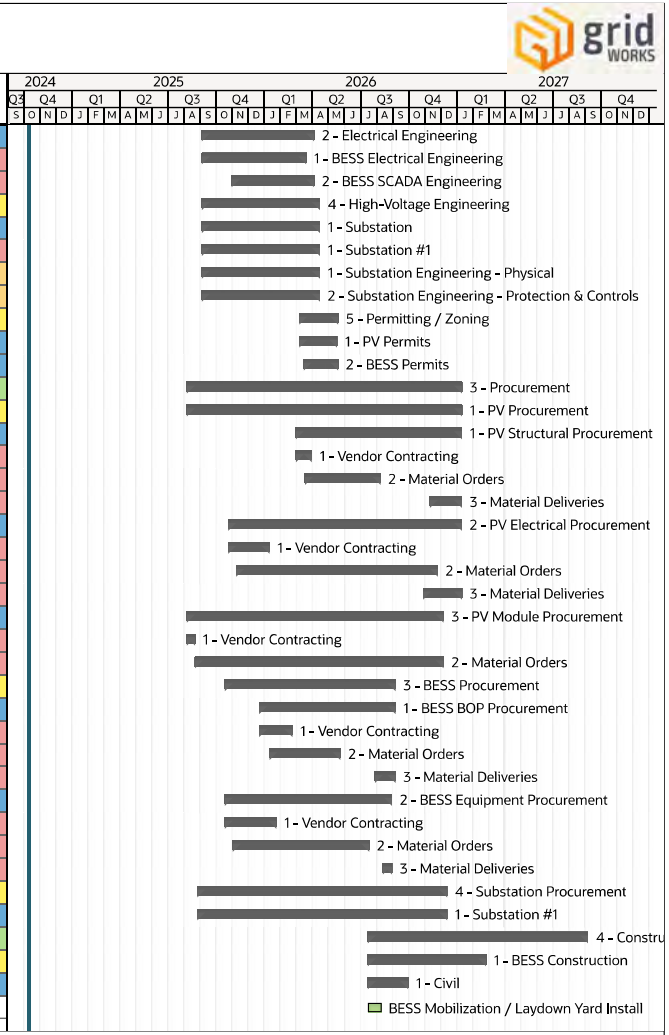
Sunbelt - PNM - 100MW PV - 100MW BESS

Page: 1 of 4
Data Date: 07-Oct-24

EST - 24129 Sunbelt - PNM - 100MW PV - 100MW BESS

WBS Proposal Layout

ID	Name	Planned Duration	Start	Finish
2 - Electrical Engineering		145.0d	02-Sep-25	01-Apr-26
1 - BESS Electrical Engineering		135.0d	02-Sep-25	18-Mar-26
2 - BESS SCADA Engineering		105.0d	29-Oct-25	01-Apr-26
4 - High-Voltage Engineering		153.0d	02-Sep-25	13-Apr-26
1 - Substation		153.0d	02-Sep-25	13-Apr-26
1 - Substation #1		153.0d	02-Sep-25	13-Apr-26
1 - Substation Engineering - Physical		153.0d	02-Sep-25	13-Apr-26
2 - Substation Engineering - Protection & Controls		153.0d	02-Sep-25	13-Apr-26
5 - Permitting / Zoning		53.0d	05-Mar-26	18-May-26
1 - PV Permits		52.0d	05-Mar-26	15-May-26
2 - BESS Permits		48.0d	12-Mar-26	18-May-26
3 - Procurement		357.0d	04-Aug-25	07-Jan-27
1 - PV Procurement		357.0d	04-Aug-25	07-Jan-27
1 - PV Structural Procurement		217.0d	26-Feb-26	07-Jan-27
1 - Vendor Contracting		22.0d	26-Feb-26	27-Mar-26
2 - Material Orders		100.0d	16-Mar-26	05-Aug-26
3 - Material Deliveries		40.0d	09-Nov-26	07-Jan-27
2 - PV Electrical Procurement		302.0d	22-Oct-25	07-Jan-27
1 - Vendor Contracting		52.0d	22-Oct-25	07-Jan-26
2 - Material Orders		260.0d	07-Nov-25	23-Nov-26
3 - Material Deliveries		50.0d	26-Oct-26	07-Jan-27
3 - PV Module Procurement		335.0d	04-Aug-25	04-Dec-26
1 - Vendor Contracting		12.0d	04-Aug-25	19-Aug-25
2 - Material Orders		323.0d	20-Aug-25	04-Dec-26
3 - BESS Procurement		224.0d	15-Oct-25	04-Sep-26
1 - BESS BOP Procurement		179.0d	19-Dec-25	04-Sep-26
1 - Vendor Contracting		42.0d	19-Dec-25	20-Feb-26
2 - Material Orders		95.0d	08-Jan-26	22-May-26
3 - Material Deliveries		30.0d	27-Jul-26	04-Sep-26
2 - BESS Equipment Procurement		219.0d	15-Oct-25	28-Aug-26
1 - Vendor Contracting		67.0d	15-Oct-25	22-Jan-26
2 - Material Orders		175.0d	31-Oct-25	15-Jul-26
3 - Material Deliveries		15.0d	10-Aug-26	28-Aug-26
4 - Substation Procurement		325.0d	25-Aug-25	11-Dec-26
1 - Substation #1		325.0d	25-Aug-25	11-Dec-26
4 - Construction		292.0d	13-Jul-26	03-Sep-27
1 - BESS Construction		155.0d	13-Jul-26	22-Feb-27
1 - Civil		55.0d	13-Jul-26	28-Sep-26
GW - 6031	BESS Mobilization / Laydown Yard Install	20.0d	13-Jul-26	07-Aug-26



Current
Progress
Critical
Milestones
Summary

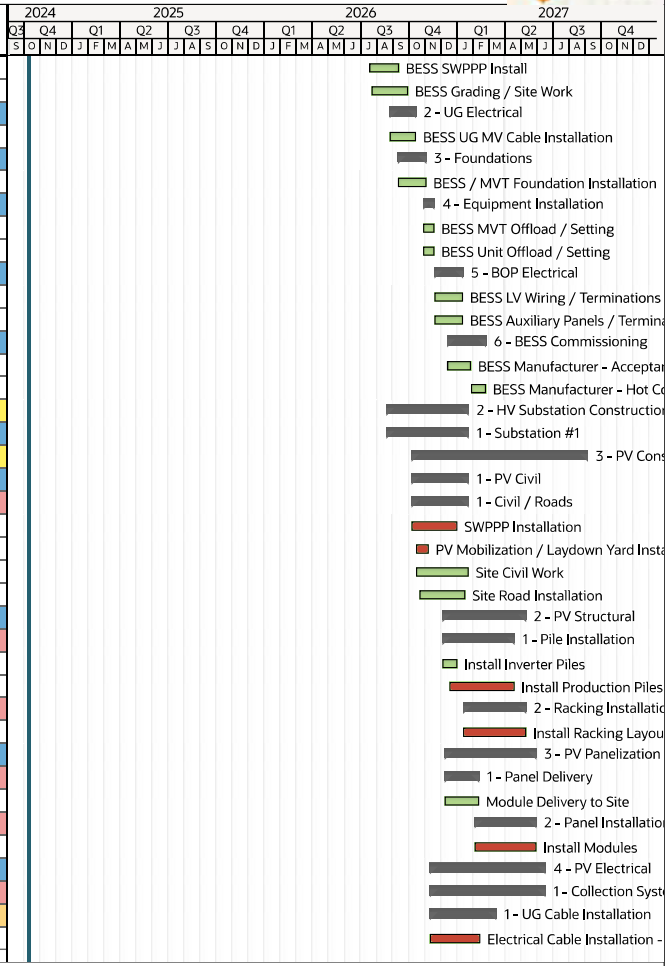
Sunbelt - PNM - 100MW PV - 100MW BESS

Data Date: 07-Oct-24

EST - 24129 Sunbelt - PNM - 100MW PV - 100MW BESS

WBS Proposal Layout

ID	Name	Planned Duration	Start	Finish
GW - 6041	BESS SWPPP Install	40.0d	15-Jul-26	09-Sep-26
GW - 5800	BESS Grading / Site Work	50.0d	20-Jul-26	28-Sep-26
2 - UG Electrical		35.0d	24-Aug-26	12-Oct-26
GW - 6021	BESS UG MV Cable Installation	35.0d	24-Aug-26	12-Oct-26
3 - Foundations		40.0d	08-Sep-26	02-Nov-26
GW - 5801	BESS / MVT Foundation Installation	40.0d	08-Sep-26	02-Nov-26
4 - Equipment Installation		15.0d	27-Oct-26	16-Nov-26
GW - 6051	BESS MVT Offload / Setting	15.0d	27-Oct-26	16-Nov-26
GW - 5802	BESS Unit Offload / Setting	15.0d	27-Oct-26	16-Nov-26
5 - BOP Electrical		35.0d	17-Nov-26	11-Jan-27
GW - 5803	BESS LV Wiring / Terminations	35.0d	17-Nov-26	11-Jan-27
GW - 6061	BESS Auxiliary Panels / Terminations	35.0d	17-Nov-26	11-Jan-27
6 - BESS Commissioning		50.0d	10-Dec-26	22-Feb-27
GW - 5804	BESS Manufacturer - Acceptance Testing / Cold Commissioning	30.0d	10-Dec-26	25-Jan-27
GW - 6071	BESS Manufacturer - Hot Commissioning	20.0d	26-Jan-27	22-Feb-27
2 - HV Substation Construction		126.0d	18-Aug-26	21-Jan-27
1 - Substation #1		126.0d	18-Aug-26	21-Jan-27
3 - PV Construction		233.0d	05-Oct-26	03-Sep-27
1 - PV Civil		75.0d	05-Oct-26	22-Jan-27
1 - Civil / Roads		75.0d	05-Oct-26	22-Jan-27
GW - 4002	SWPPP Installation	60.0d	05-Oct-26	31-Dec-26
GW - 4001	PV Mobilization / Laydown Yard Installation	20.0d	12-Oct-26	06-Nov-26
GW - 4004	Site Civil Work	70.0d	12-Oct-26	22-Jan-27
GW - 4005	Site Road Installation	60.0d	19-Oct-26	15-Jan-27
2 - PV Structural		110.0d	02-Dec-26	07-May-27
1 - Pile Installation		95.0d	02-Dec-26	16-Apr-27
GW - 4101	Install Inverter Piles	20.0d	02-Dec-26	31-Dec-26
GW - 4100	Install Production Piles	85.0d	16-Dec-26	16-Apr-27
2 - Racking Installation		85.0d	11-Jan-27	07-May-27
GW - 4200	Install Racking Layout & Assembly	85.0d	11-Jan-27	07-May-27
3 - PV Panelization		122.0d	07-Dec-26	28-May-27
1 - Panel Delivery		45.0d	07-Dec-26	10-Feb-27
GW - 4300	Module Delivery to Site	45.0d	07-Dec-26	10-Feb-27
2 - Panel Installation		85.0d	01-Feb-27	28-May-27
GW - 4350	Install Modules	85.0d	01-Feb-27	28-May-27
4 - PV Electrical		150.0d	09-Nov-26	14-Jun-27
1 - Collection System		150.0d	09-Nov-26	14-Jun-27
1 - UG Cable Installation		85.0d	09-Nov-26	12-Mar-27
GW - 5000	Electrical Cable Installation - AC Cable	65.0d	09-Nov-26	12-Feb-27



Current
Progress
Critical
Milestones
Summary

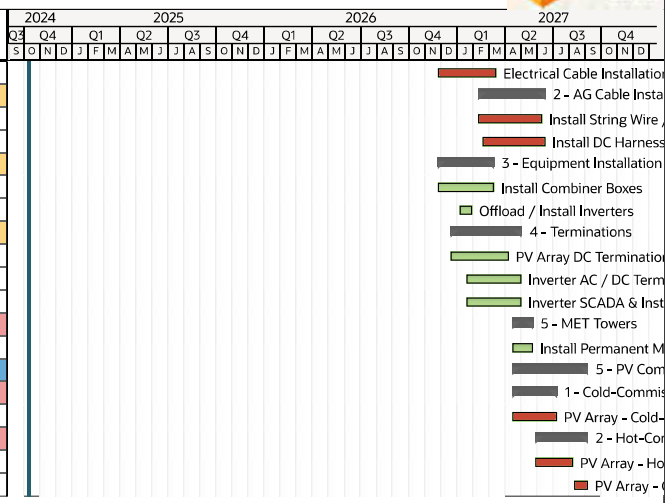
Sunbelt - PNM - 100MW PV - 100MW BESS

Data Date: 07-Oct-24

EST - 24129 Sunbelt - PNM - 100MW PV - 100MW BESS

WBS Proposal Layout

ID	Name	Planned Duration	Start	Finish
GW - 5001	Electrical Cable Installation - DC Cable	75.0d	23-Nov-26	12-Mar-27
2 - AG Cable Installation		90.0d	08-Feb-27	14-Jun-27
GW - 5100	Install String Wire / Messenger Wire	85.0d	08-Feb-27	07-Jun-27
GW - 5101	Install DC Harnesses	85.0d	15-Feb-27	14-Jun-27
3 - Equipment Installation		70.0d	24-Nov-26	08-Mar-27
GW - 5200	Install Combiner Boxes	70.0d	24-Nov-26	08-Mar-27
GW - 5201	Offload / Install Inverters	20.0d	04-Jan-27	29-Jan-27
4 - Terminations		94.0d	17-Dec-26	30-Apr-27
GW - 5300	PV Array DC Terminations	75.0d	17-Dec-26	05-Apr-27
GW - 5301	Inverter AC / DC Terminations	75.0d	18-Jan-27	30-Apr-27
GW - 5302	Inverter SCADA & Instrumentation Installation	75.0d	18-Jan-27	30-Apr-27
5 - MET Towers		30.0d	12-Apr-27	21-May-27
GW - 5900	Install Permanent MET Tower	30.0d	12-Apr-27	21-May-27
5 - PV Commissioning		103.0d	12-Apr-27	03-Sep-27
1 - Cold-Commissioning		60.0d	12-Apr-27	06-Jul-27
GW - 6000	PV Array - Cold-Commissioning	60.0d	12-Apr-27	06-Jul-27
2 - Hot-Commissioning		70.0d	27-May-27	03-Sep-27
GW - 6010	PV Array - Hot-Commissioning	50.0d	27-May-27	06-Aug-27
GW - 6011	PV Array - Operational Test / Capacity Testing	20.0d	09-Aug-27	03-Sep-27



Current
Progress
Critical
Milestones
Summary

Sunbelt - PNM - 100MW PV - 100MW BESS

Data Date: 07-Oct-24

EXHIBIT H-1

COMMISSIONING PROCESS

1. INTRODUCTION

The commissioning process of a photovoltaic power generation plant (PV plant) and Energy Storage System (ESS) typically involve a series of inspection and test activities that verify compliance of the PV plant and ESS with the applicable requirements and standards to which such plant is designed and constructed. As part of this process, the construction contractor will need to inspect and test a representative sample of components and subsystems before they are placed into service. In the case of utility scale solar PV plants, commissioning procedures can be applied to the complete solar plant or to parts of the plant (normally referred to as blocks). The commissioning plan for the Project shall be consistent with the foregoing process and the requirements set forth in this Exhibit (such plan being the "**Commissioning Plan**").

2. COMMISSIONING PROCEDURE

The Commissioning Plan shall cover not only mechanical completion of the PV Power Plant but also PV Capacity Testing, ESS Capacity Testing, Functional Testing and ESS Unit Capability testing. This means that in addition to verifying proper installation of all the components and systems, Contractor will be required to undertake testing to verify that such components and systems are (i) working properly and can produce energy safely and reliably and without damage or risk to Operating Personnel, subject to such persons' compliance with the training provided pursuant to this Agreement. and (ii) satisfy the PV Capacity Test and Function Test requirements set forth in Exhibit H-2, as such testing and will be more particularly described in the Commissioning Plan.

The Commissioning Plan shall be divided into two sets of procedures:

1. Inspection procedures; and
2. Capacity Testing (PV and ESS), Functional Testing and ESS Unit Capabilities testing procedures.

The detailed procedures to be set forth in the Commissioning Plan for each procedure described above shall include, as a minimum:

1. Purpose and description of the procedure;
2. Procedure code;
3. Needed milestones and conditions;
4. Sample size;
5. Responsible party and observers;
6. Equipment needed;
7. Health and safety precautions;
8. Pass /fail criteria; and
9. References.

3. ACCEPTANCE INSPECTIONS

Acceptance inspections shall be documented and provided to the Owner.

The following inspections shall be performed in accordance to IEC 60364-6 and IEC 62446 as part of the inspection aspects of the Commissioning Plan:

Description	Scope
Verification of completed work	100% of PV plant
Verification of support structures	100% of PV plant
Verification of the cable installation	100% of PV plant
Verification of buried cable	100% of PV plant
Weather station verification	100% of PV plant
Verification of the monitoring, and control system and PPC	100% of PV plant
Verification of the polarity of strings	100% of PV plant
Open circuit medium voltage strings	100% of PV plant
Measurement of electric cable insulation from the combiner box to the inverter	100% of PV plant
Verification of the condition of the junction boxes	100% of PV plant
Megger DC string conductor, DC feeder, and AC cables	100% of PV plant
VLF Hipot MV cables	100% of PV plant
Continuity and resistance testing for grounding integrity at grounding connection points.	100% of PV plant
Measure of input short circuit current and open circuit voltage at the string	100% of strings measured on site
Verification of the Inverter Efficiency	100% of inverters
Verification of OEM-provided Inverter commissioning documentation	100% of inverters
Verification of the tracker commission protocol as per manufacturer's guidelines (see the appendix to this Exhibit H-1)	100% of trackers
Measure transformer insulation resistance – winding to winding	100% of Transformers
Measure transformer insulation resistance – winding to ground	100% of Transformers
Verification of transformer turn ratios at all tap positions	100% of Transformers
Measure core insulation resistance at 500 V_{DC} if the core is insulated and the core ground strap is removable	100% of Transformers
Verify secondary voltage, phase to phase, and phase to neutral, after energization and prior to loading	100% of Transformers

Inspection of photovoltaic modules	100% of PV plant
Thermographic study of hot spots in panels	100% of PV plant
Laboratory tests for photovoltaic modules	According to norm UNE 66020-1
Verification of Minimum Gross Capacity	100% of PV plant
PV Capacity Test as defined on Exhibit H-2	100% of PV plant
Functional Test as defined on Exhibit H-2	100% of PV plant
I-V Curve Testing Strings	5% of PV plant

I-V Curve Testing or Thermal Imaging shall be done 5% of the PV strings. Raw data shall be provided in Excel for measured values. STC-corrected values shall be shown for Voc, Isc, Vmp and Imp. Graphs shall be provided for measured values. Short-circuit current, open-circuit voltage, maximum power current and maximum power voltage shall be identified. Pass/Fail criteria. Perform thermal imaging for 100% of the PV strings during clear skies with a minimum irradiance of 600W/m2. Raw image data resulting from the thermal imaging shall be provided to Owner. To the extent thermal imaging indicates failures or degradation in the modules, as determined by Owner in its reasonable discretion, Contractor shall perform IV Curve Traces on all affected PV strings.

APPENDIX TO EXHIBIT H-1 (SAMPLE)

Tracker Commissioning Check List

(to be finalized prior to execution of the EPC contract)

	Component Mechanical Inspections	Inspection Method	Specification	Comments	Pass/Fail
1	Obtain Job Site Information, Tracker Design, Site Layout	Visual	Latitude, Longitude, Time zone, Panel Length, Row Spacing, Drawings.		
2	Module Clamps incl. end of Row 20013-901	Visual / Spot torque test	Proper hardware. Spacers end of rows. Torque on bolts ~ 13 +/-2 ft.-lbs.		
3	Bolt-on Bearing Housing Torque	Visual / Torque Wrench	I Beam- 100- 180 ft.-lbs. Housing Bracket – 70-90 ft.-lbs.		
4	Bolt-on Column Cap Torque	Visual / Torque Wrench	Bracket - I Beam- 100- 180 ft.-lbs. Chase Nipple – 30-40 ft.-lbs. Torque Tube Bolts – 90 - 100 ft.-lbs.		
5	Torsion Tube Welds	Visual / Weld Gage	Porosity, penetration, cold galvanized 3/16 Weld all around		
6	Row Straightness	Visual / Digital Level	Alignment of Rows Length and Plane 0 degrees +/- 2 degrees		
7	Harmonic Dampeners	Visual	Correct spacer installation. Lock washer compressed.		
8	Drivelines and U-Joints	Visual	Min. 2" Engagement splined shaft into U-joint. 30-40 ft.-lbs. U-joints perpendicular on either side of Slew ring.		
9	Slave Drive Gearboxes	Visual	All bolts installed. 100-110 ft.-lbs.		
10	Drive Gearbox Mechanical	Visual	All bolts installed.		
11	PVC Driveline End Caps	Visual	Driveline shaft ends capped.		
12	Half Row Plugs	Visual	Foam Plugs inserted in Slew rings openings.		
13	Controller Mechanical Site Data, 4X Controls	Visual	Mounted in Shade. Facing North.		
14	Garmin Mechanical	Visual	Mounted outside of enclosure. Clear view of sky.		
15	Wind Stow Switch Mechanical	Visual	Mounted above snow level. Clear wind view all sides.		

Drive Motor Inspection

16	Limit Switches	Visual / Manual	Safety (Omron), Logic Limit, operating correctly, tightened.		
17	Channel Bracket	Visual	Bolts installed correctly. Lock washers compressed.		
18	Oil Level Gearbox	Visual	Oil in sight glass. Use Mobil SHC 630.		
19	Breather, Gearbox	Visual	Breather plug in top of gearbox.		
20	Main power conduit	Visual / Manual	All connections tight, no gaps.		
21	Non Metallic liquid tight	Visual / Manual	All connections tight. No kinks or gaps.		

22	Drive Motor Control Box	Visual / Manual	Upper bracket bolts installed and secure.		

Electrical Connection Inspection and Measurement

23	Drive Motor Controller	Multi-Meter	Correct input voltage Motor max Amp draw driving E/W 4 Amps +/- 3 Phase 480 VAC / 3 Phase 208 VAC		
24	Central Controller Site Data, 4X Controller	Multi-Meter / Manual	Correct input voltage 1 Phase 110-240 VAC		
25	TVSSs Install in Motor Controller	Visual / Manual	Motor Controller.		
26	Garmin Electrical	Visual / Manual	Wire routing, connection OK. Output #3 Green LED on 4X Control ICS, Site Data ICS.		
27	Wind Stow Switch	Visual / Manual	Wire routing, connection OK. Output #2 Green LED on 4X Control ICS, Site Data ICS.		
28	Control Network Site Data, 4X Controller	Visual / Manual	4X Motor Control Digi One connected to Side Data Digi One with Cat5 Cable.		
29	Site Data Controller SCADA	Visual / Manual	Connected to Digi One. Error lights off. All lights Green.		

PC Initial Setup/Tests

30	Tracker Modbus address check Modbus #11		Address correct to site layout.		
31	Load Garmin Data		Data correct per jobsite. Lat, Long, Date, Time.		
32	Motor Direction Input		Proper movement direction. East at calibration		
33	Tracker Calibration		Proper total Pulses.		
34	Tracker accuracy/offset setting Bias		Manual pos = 0° Measured within 0.2°		
35	Backtracking Geometry Check	Visual /	Check & measure extremes Panel length		
36	Total Tracker Travel Angle	Manual	Check & measure extremes East and West		
37	Operational Check	Digital level	Set to automatic & test accuracy AM/PM		
38	Wind Stow Test	Visual /	Trip Wind Stow Switch Reset ·Tracking correctly.		
39	ICS Status, General Setup Calc Results, General Setup	Manual	Capture Screen Shots of Results before leaving Site		

EXHIBIT H-2

PERFORMANCE TESTING

1. INTRODUCTION

The ability of a photovoltaic power generation plant (PV plant) to produce net AC electricity at the PV plant's rated output depends on the local weather conditions and the plant performance. PV plant performance can be understood as a combination of two factors: the overall plant efficiency and the proportion of potentially productive time the plant is effectively working.

The Capacity Test shall be conducted in accordance with ASTM E2848-13. The reporting conditions for the Capacity Test will be developed in accordance with ASTM E2939-13 and will utilize site measured irradiance, ambient temperature, and wind speed data collected during the Capacity Test. The Capacity Test will include at least three (3) days of data and at least fifty (300) filtered data points. Where there are inconsistencies between Exhibit H-2 and ASTM E2848-13 or ASTM E2939-13, then the procedures outlined herein shall supersede.

The procedures and tests set forth in this Exhibit H-2 establish how performance testing of the PV plant is to be conducted and reported to Owner, and separately to determine whether Contractor has achieved the Guaranteed Solar Capacity.

The PV Capacity Test Procedures to be developed in accordance with this Agreement shall reflect the provisions set forth in this Exhibit H-2.

2. DEFINITIONS

In this Exhibit, unless the context otherwise requires, words and expressions defined in this Agreement and not in this Exhibit H-2 shall have the same meaning when used herein. The following words and phrases in "Title Case" shall when used in this Exhibit H-2 have the meanings assigned to them below, and cognate expressions shall have corresponding meaning, namely:

"**Bifaciality Factor**" means the defined bifaciality factor of the modules installed on the Project as stated on the manufacturer's datasheet.

"**Capacity Test**" means short term, plant wide test meeting the requirements of this Exhibit H-2 and a condition to Substantial Completion used to verify the plant is fully commissioned and ready for commercial operation.

"**Capacity Test Calculator**" means an Excel tool provided by the Contractor to be used to calculate the Target Capacity and Measured Solar Capacity during the Capacity Test Measurement Period.

"**Capacity Test Measurement Period**" means the period when the Capacity Test is performed, which

period shall be at least 3 days, and shall continue for consecutive additional days until the Minimum Datapoints have been met. If after 10 days of testing the Minimum Datapoints are not achieved, a reduction in the Minimum Datapoints to 150 or reduction in Minimum Irradiance to 200 or combination of both may be used to complete the test.

"**Capacity Test Procedures**" means a detailed plan for administering the Capacity Test to be provide by Contractor at least 30 Calendar Days prior to the first date of the scheduled Capacity Test Measurement Period, which plan shall meet all of the requirements therefor set forth in Appendix 1 to this Exhibit H-2 and include, at a minimum, all points to be monitored and identification of key personnel and parties.

"**Capacity Test Report**" means summary report of the Capacity Test results, conditions during the test, the Capacity Test Procedures, Data Quality and Instrumentation Plan and applicable calibration certificates for equipment used in the test, which report shall meet all of the requirements therefor set forth in Appendix 1 to this Exhibit H-2.

"**Delivery Point**" means the physical point, situated on the high voltage side of the Interconnection Substation.

"**Guaranteed Solar Capacity**" means a Measured Capacity Ratio of 97%

"**In-plane Irradiance**" means the Global Irradiance, in watts per square meter, measured in the plane of array. This term is also often referred to as "**Plane-of-Array**" or "**POA**" Irradiance.

"**Measured Solar Capacity**" means the measured capacity as calculated using the procedures outlined herein.

"**Measured Solar Capacity Ratio**" means the Measured Solar Capacity divided by the Target Solar Capacity, calculated to the nearest 0.1%.

"**Minimum Datapoints**" is a condition met when at least 300 one-minute allowable Qualifying Datapoints meeting the requirements set forth in this Exhibit H-2 are recorded after all data filtering has occurred as outlined herein. If the Minimum Irradiance criteria set forth is causing a delay in the test and pushing it beyond 15 days, the test procedure may be modified to allow fewer data points or a reduction in the Minimum Irradiance as described in the Capacity Test Measurement Period.

"Minimum Solar Capacity" For the purposes of the Functional Test, shall mean 100 MW.

"**Minimum Guaranteed Solar Capacity**" means the Measured Solar Capacity Ratio of 95.0%

"**Minimum Irradiance**" is a condition met when the average Total Plane-of-Array (POA) Irradiance, as measured by the front and rear pyranometers on site, total greater than or equal to 400 W/m^2.

"**Project Model**" means the Contractor PVSyst generation model for the Project that reflects the As-Built conditions, including post-processing that occurs outside of the program.

"**Project Capacity Model**" means the Project Model as adjusted to remove assumptions for snow losses, curtailment, and availability, and include measured soiling and albedo values during the Capacity Test Measurement Period.

"**Qualifying Datapoints**" mean the remaining datapoints after all filtering in Section 8 have been applied.

"**Reporting Conditions**" mean the median Total Plane of Array Irradiance (POA), ambient temperature, and wind speed of the measured Qualifying Datapoints using the filtering described herein.

"**Revenue Meter**" means the revenue meter for the Project as agreed by the Parties.

"**Solar Capacity**" means in respect of the PV Power Plant, at any time and from time to time, the capability (expressed in MW (AC)) of the PV Power Plant to generate and provide energy to the Delivery Point. For the avoidance of doubt, Solar Capacity shall be net of electrical losses between the generator terminals and the Delivery Point.

"**Standard Test Conditions**" or "**STC**" means a set of ambient reference conditions, which include a photovoltaic module in-plane solar irradiance of thousand (1000) watts per square meter, solar spectrum of AM 1.5 and photovoltaic module cell temperature of twenty-five degrees (25°) Celsius.

"**Target Capacity**" means the target capacity as calculated using the procedures outlined herein.

"**Total Plane of Array Irradiance (E_{TOTAL})**" means the sum total of the front plane of array irradiance and the rear plane of array irradiance multiplied by the Bifaciality Factor of the modules as shown in Equation 1 below. For the Measured Solar Capacity calculation the E_{REAR} will also be multiplied by the Rear Shading Factor defined in Table 2 of Appendix 2 to account for loss between the rear POA sensor and the module.

$$Equation\ 1: \qquad E_{TOTAL} = E_{POA} + \frac{C_{DC,bifi}}{C_{DC}} * E_{REAR} * \varphi * (1 - R_{SH})$$

Where:

E_{POA} – Measured front side POA
E_{REAR} – Measured rear side POA
$C_{DC,bifi}$ – The total DC Nameplate Capacity (in MW) of the Facility that use bifacial modules
$C_{DC,bifi}$ – The total DC Nameplate Capacity (in MW) of the Facility that use bifacial modules
φ – Bifaciality Factor as defined on the manufacturer's datasheet
R_{SH} – Rear Shading Factor, only used in measured irradiance E_{TOTAL} calculation

3. FUNCTIONAL TEST

3.1. Functional Test procedure

The data for the Functional Test report will be collected during a one (1) Hour duration for all intervals when the minimum In-plane Irradiance conditions of 600 W/m2 are met. A minimum of 30 minutes of data are required.

In the event the 30 minutes of data (minimum irradiance conditions) have not been satisfied at the end of the one (1)-Hour period, the measurement period may be extended until 30 minutes of data are collected..

Inverter clipping and POI clipping intervals will be excluded. Any intervals where the power output of one (or more) inverters is greater than 98.0% of the rated or programmed power limit or

the intervals where the power output of the plant is greater than 98.0% of the rated or programmed power limit at the point of interconnection (POI).

Testing shall be performed between the hours of 9:00 a.m. to 3:00 p.m. when the In-Plane Irradiance is greater than 600 W/m2 with minimal cloud cover. One (1) minute interval readings shall be taken, during which following data points shall be recorded:

1. In-Plane Irradiance (W/m^2) using all available calibrated pyranometers (minimum of three (3) calibrated pyranometers per 50 MW of plant capacity) with maximum measurement tolerance of 2%.

2. Cell temperature (ºC) using a minimum of six (6) calibrated temperature sensors with accuracy of at least +/-1%.

3. Total PV Power Plant output (MW) to the grid at the delivery point using facility energy meter.

Once the data points have been completely logged, the dataset will be used to compare the Corrected Capacity of the PV Power Plant to the Minimum Gross Capacity for each such interval.

$$C_{cor} = \text{Max}\left(C_{meas_i} * \left(\frac{G_{ref}}{G_{meas}}\right) * \left(\frac{1}{1+T_{coeff}(T_{cell}-T_{stc})}\right)\right)$$

Where:

- C_{meas_i} = Measured AC Capacity of the field in MW for each measurement interval of the dataset
- C_{cor} = Corrected Capacity output in MW (corrected to Delivery Point Conditions)
- G_{meas} = Measured In-plane Irradiance in W/m^2 at the Solar Station
- G_{ref} = 1,000 W/m^2 (Standard Test Conditions In-plane Irradiance)
- T_{coeff} = Power Temperature Coefficient of PV Modules according to photovoltaic module manufacturer's datasheet in %/ºC
- T_{cell} = Temperature of Monitored Cell in °C
- T_{stc} = 25°C (Standard Test Conditions cell temperature)

If the Corrected Capacity is greater than the Minimum Solar Capacity, then the project has successfully passed the Functional Test.

4. GUARANTEED SOLAR CAPACITY TEST

4.1. PV Capacity test procedure

4.1.1. No less than 30 Business Days prior to the first day of the scheduled Capacity Test Measurement Period, a draft Capacity Test Plan shall be submitted to the Owner by the Contractor for Owner's review and comment. Contractor shall incorporate all of Owner's reasonable comments into the final Capacity Test Plan and resubmit the same for Owner's review and approval (such approval not to be unreasonably withheld or delayed).

4.1.2. The Contractor shall give written notice to the Owner 3 Business Days prior to the start of the Capacity Test (including any re-performance thereof).

4.1.3. Contractor shall perform the Capacity Test in accordance with the final approved Capacity Test Plan.

4.1.4. The Capacity Test Measurement Period shall last no less than three (3) consecutive days. If the Minimum Datapoints requirement is not met during such 3-day period, the Capacity Test Measurement Period shall be extended for consecutive days until the Minimum Datapoints requirement is met.

4.1.5. The following input parameters shall be measured during the Capacity Test (collectively, the "Input Parameters"):

4.1.5.1. Front Plane-of-Array Irradiance (POA): An estimate of the average irradiance incident upon the front side of the PV array in the Project. No provision is allowed for shading, so any shading of any of the irradiance sensors during any aggregation interval is cause to exclude that data record.

4.1.5.2. Rear Plane-of-Array Irradiance (POA): An estimate of the average irradiance incident upon the rear side of the PV array in the Project.

4.1.5.3. Ambient Temperature: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit H-2.

4.1.5.4. Wind Speed: As recorded as recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit H-2.

4.1.5.5. Revenue Meter Energy Generation: Energy as recorded by the Revenue Meter during the Capacity Test Measurement Period.

4.1.5.6. Inverter-Level Power Generation: AC output data for each inverter shall be provided for the purposes of identifying periods of inverter clipping.

4.1.5.7. Inverter-Level Power Factor: Power factor output data for each inverter shall be provided for the purposes of identifying periods of inverters performing outside of the designed power factor threshold.

4.1.5.8. Albedo: As recorded as recorded by the Project meteorological stations.

4.1.5.9. Soiling: As recorded as recorded by the Project meteorological stations. If measured soiling data are not available a 1% soiling loss will be assumed for the test.

4.1.6. During the Capacity Test Measurement Period, irradiance data shall be sampled at no greater than five (5) second intervals. Irradiance data shall be reported at no greater than one (1) minute intervals, consisting of averaged five (5) second sampled data. Power generation data shall either be sampled and reported at the intervals required for irradiance, as noted above, or at the rate the Revenue Meter and SCADA record power data but not to exceed 1-minute intervals. Other data shall be sampled at no greater than one (1) minute intervals and shall be reported at no greater than one (1) minute intervals. All data shall be reported in time-synchronized intervals.

4.1.7. Data shall be averaged and filtered in accordance with the procedures below:

4.1.7.1. Missing Data: Missing records shall be marked as missing with a non-numeric identifier. Missing records shall not have a value included in the analysis, but shall be documented.

4.1.7.2. DAS Equipment Malfunction: Data records with invalid Input Parameters (e.g. all sensor readings reported as out of range by the DAS) shall also be marked as invalid.

4.1.7.3. Below Minimum Irradiance: All records with a Total Plane-of-Array Irradiance below the Minimum Irradiance shall be marked as irradiance too low and filtered out.

4.1.7.4. Unstable irradiance: Irradiance measurements shall be deemed stable if i) all individual sensor readings are within 25 Watts per meter squared of the average of all the sensor readings and ii) the average of all sensor readings is not more than 10% greater or less than the previous interval reading. If both conditions above are not met, the irradiance will be deemed unstable, flagged and the data will not be used in the test. Under certain conditions the Parties may agree to modify the unstable irradiance parameters to either increase the number of Qualifying Datapoints or improve the regression quality or adjust to account for the time interval used in the test.

4.1.7.5. Inverter clipping: Any intervals where the power output of one (or more) inverters is greater than 98.0% of the rated or programmed power limit.

4.1.7.6. POI Clipping: Any intervals where the power output of the plant is greater than 98.0% of the rated or programmed power limit at the point of interconnection.

4.1.7.7. Power Factor: Any intervals where the inverter power factor is less than ±0.95 will be excluded from the test data.

4.1.7.8. Array shading by internal (array self-shading) or external (nearby objects). A schedule of expected shade times shall be defined in the Capacity Test Procedures. This schedule may be altered during the Capacity Test. Records occurring during these shade intervals identified during testing shall be marked as shaded and excluded from the test. Photographic evidence of array conditions shall be provided.

4.1.7.9. Array shading by environmental conditions (e.g. frost, snow or debris). Onsite observers shall record time intervals when such conditions exist as the Capacity Test progresses. Photographic evidence of array conditions shall be provided.

4.1.7.10. Albedo Exclusion: Any periods when significant variations in measured albedo (>5%) between MET stations or spot measurements) occurs on site. Photo evidence of differential snow impacts to albedo will also be accepted.

4.1.8. Data will be collected until the Minimum Datapoints threshold has been achieved.

4.1.9. Reporting Conditions Determination

4.1.9.1. The Reporting Conditions shall be determined based on measured data set. Data records shall include the measured Total POA Irradiance, ambient temperature and wind speed input parameters, as well as any simulated auxiliary parameters necessary for marking data records according to the primary data exclusion criteria.

4.1.9.2. Apply the data exclusion criteria identified in Section 8 to the measured data records.

4.1.9.3. Compute the median values of Total POA Irradiance, ambient air temperature, and wind speed. The reporting condition for Total POA Irradiance shall not be less than 400 W/m².

4.1.9.4. Round median irradiance to the nearest integer W/m², median temperature to the nearest 0.1 °C, and corrected median wind speed to the nearest 0.1 m/s. Use values as reporting conditions in Table 4.

4.1.10. Procure hourly output from the Project Capacity Model. Including the following parameters:

4.1.10.1. Availability and Curtailment Losses shall be assumed 0%

4.1.10.2. Update the model to included measured soiling and albedo values

4.1.10.3. Update module quality factor to include degradation (as applicable)

4.1.10.4. The PVSyst hourly output, after post-processing, must contain at a minimum the front plane of array irradiance, rear plane of array irradiance, the ambient temperature, wind speed, inverter energy output, modeled power generation, shade loss, and clipping loss (GlobInc, GlobBak, TAmb, WindVel, EOutInv, POI Limited, ShdBLss, and IL Pmax) respectively.

4.1.11. Apply the data exclusion criteria identified in Section 4.3 to the simulation data records.

4.1.12. Using the Capacity Test Calculator and the data filtering described above, calculate the multilinear regression coefficients (a1 -a4) and Target Capacity, using the hourly modeled output data from the Project Capacity Model and Reporting Conditions using Equation 2 below:

$Equation\ 2$: $$P_{RC} = E_{TOTAL,RC}(a_1 + a_2 * E_{TOTAL,RC} + a_3 * T_{a.RC} + a_4 * v)$$

Where:

P_{RC} – The calculated Target Capacity or Measured Capacity of the project

$E_{TOTAL,RC}$ – Total POA Irradiance Reporting Condition

$T_{a,RC}$ – The ambient temperature Reporting Condition

v_{RC} – The wind speed Reporting Condition

Coefficients a_1-a_4 – Calculated multilinear regression coefficients

4.1.13. If the Capacity Test overlaps two months a 30 day rolling window centered around the midpoint of the Capacity Test Measurement Period shall be used.

4.1.14. Using the Capacity Test Calculator and the data filtering described above, calculate the multilinear regression coefficients (a1 -a4) and Measured Solar Capacity, using the measured data and the Reporting Conditions using Equation 2 above.

4.1.15. Calculate the Measured Solar Capacity Ratio using the calculated Measured Solar Capacity and Target Capacity values.

4.1.16. If the Measured Solar Capacity Ratio of the Project does not meet or exceed the Minimum Guaranteed Solar Capacity, the Contractor shall identify and promptly resolve the source of the problem and promptly perform the Capacity Test again in accordance with these procedures (other than Paragraph 1 hereof) until the Measured Solar Capacity of the Project achieves the Guaranteed Minimum Solar Capacity. If the Measured Solar Capacity Ratio is more than the Guaranteed Minimum Solar Capacity but is less than the Guaranteed Solar Capacity, then Contractor shall be responsible for the liquidated damages as set forth in the Agreement.

4.2. Capacity Test Report

No later than five (5) Business Days following the end of the Capacity Test Measurement Period of a successfully run Capacity Test, a draft Capacity Test Report will be submitted to the Owner by the Contractor. Owner shall have five (5) Business Days to accept or reject the results of the draft Capacity Test Report, and provide in writing any comments of Owner on such draft Capacity Test Report. In the event that Owner rejects all or any part of the draft Capacity Test Report, Contractor shall, within five (5) Business Days thereafter address any comments of Owner and re-submit the draft Capacity Test Report to Owner. This process shall continue until Owner accepts the draft Capacity Test Report. Any dispute regarding the results of the Capacity Test or the Capacity Test Report shall constitute a Dispute as described in the Agreement.

APPENDIX 1 TO EXHIBIT H-2

Additional Requirements

Capacity Test Procedure (Plan)

The Capacity Test Procedures shall include (at a minimum) the following information:

- This test procedure
- Identification of key personnel and parties to be involved in the test
- The Project Model
    - For the purposes of the Capacity Test, the Project Model shall exclude array soiling loss, module/system degradation and assume 100% availability
    - Meteorological data used for calculation of the Monthly Reporting Conditions
- Identification of the Project under test (at a minimum)
    - Number and make/model of PV modules
    - Array orientation
    - Location (latitude, longitude, street address)
    - Racking type and tilt
    - Tracker range of motion (if applicable)
    - Number and make/model of Inverters
    - Row to row spacing (ground coverage ratio)
- Identification of all data points to be monitored during the test
- The starting and ending dates of the scheduled Capacity Test Measurement Period.
- Table of all sensors and transducers to be used, including cut sheets, calibration records, map of sensor locations with sufficient detail to allow observers to locate the sensors and transducers. This includes sensors required for all applicable Input Parameters (MET station sensors, inverters, and Revenue Meter).

Capacity Test Report

The Capacity Test Report shall contain:

- The Capacity Test Procedures, including all requirements as outlined herein.
- The actual start and end date/times of the Capacity Test Measurement Period
- Comments on environmental conditions during the Capacity Test Measurement Period that affect the results of the test
- Summary of test results
- Regression coefficients used to calculate Target Capacity and Measured Solar Capacity
- Comparison of test results with Minimum Guaranteed Solar Capacity and Guaranteed Solar Capacity
- All calibration certificates for pyranometers, temperature sensors, and revenue meters used in the test

Raw data used as input to the Capacity Test, along with QC disposition for each input data record, shall be provided electronically (via CSV, XLS, or XLSX formats) to the Owner with the Capacity Test Report.

Data Quality and Instrumentation Requirements

Data quality shall be identified as one item from a set of quality categories for each data record analyzed. Only data from records where all input parameters are valid and within specified limits shall be used in computing capacity estimates.

1.1. Sensor Requirements

Front plane of array irradiance sensors shall be at a minimum "High Quality" classified pyranometer(s) as defined in ASTM2848-A1.2 (Secondary Standard per ISO 9060). Pyranometers shall include device-specific characterization data that shall, at minimum, include cosine and temperature response. Alternative pyranometers may be used if approved by the Owner.

Pyranometers shall be used only within their valid calibration period and shall be cleaned at the start of the Capacity Test Measurement Period and cleaned daily during the test if the Capacity Test Measurement Period extends beyond one (1) week. Rear plane of array irradiance may be measured using either a high-quality reference cell (module) or a "High Quality" classified pyranometer(s) as defined in ASTM2848-A1.2 (Secondary Standard per ISO 9060).

All measurement devices and sensors shall meet the minimum accuracy requirements and range requirements set forth in the table below:

Measurement	Instrument Type	Test Function	Range	Accuracy
Front Plane of Array Irradiance	Front Pyranometer	Primary for Capacity Test	0 to 1600 W/m^2 285 to 2800 nm	±2.0% daily
Rear Plane of Array Irradiance	Rear Pyranometer	Primary for Capacity Test	0 to 1600 W/m^2 285 to 2800 nm	±2.0% daily
Global Horizontal Irradiance	Pyranometer	Secondary for Capacity Test	0 to 1600 W/m^2 285 to 2800 nm	±2.0% daily
Ambient Air Temperature	Temperature Probe	Primary for Capacity Test	-40°C to +60°C	±1°C
Wind Speed	Sonic Wind Sensor	Primary for Capacity Test	0 – 60 m/s	±5%
PV Plant Power	PV Power Revenue Meter	Primary for Capacity Test	0 to PV Power Plant size +20%	ANSI C-12.20
Inverter Power	Inverter Meter	Primary for Capacity Test	determined from inverter data sheet	determined from inverter data sheet
Inverter Power Factor	Inverter Meter	Primary for Capacity Test	determined from inverter data sheet	determined from inverter data sheet
Albedo	Albedometer	Primary for Capacity Test	0 to 1600 W/m^2 285 to 2800 nm	±2.0% daily
Soiling Station	Differential Soiling Station	Primary for Capacity Test	0-100	+/- 1%

1.2. Multiple Measurements

Multiple Measurements shall be recorded for all environmental data throughout the Site in order to capture the operating conditions for all regions of the array. There is a high probability that there will be periods of time in which portions of the Project are exposed to significantly different irradiance conditions than other portions, e.g. due to isolated clouds.

Below are the main sensors to be used in the Capacity Test:

- Front and rear plane of array irradiance (POA): Plane of Array readings shall be averaged from sensors installed. To be clear, MET station will include front pyranometer, back pyranometer/reference cell
- Ambient Air Temperature: Ambient temperature readings shall be averaged from sensors installed.
- Wind Speed: wind speed sensors shall be averaged from sensors installed.
- Soiling Station: At least one soiling station, averaged readings will be used for multiple stations.
- Albedometer: At least one albedometer, averaged readings will be used for multiple sensors.
- Inverter Meter: The power and power factor reading for each inverter.
- PV Plant Meter: The power reading of the Revenue Meter.

APPENDIX 2 TO EXHIBIT H-2

Project Capacity Model and Reporting Conditions Definition

Project Capacity Model

The requirements for the Project Capacity Model to be used for evaluating the Measured Solar Capacity is detailed in this Exhibit. This section outlines all input parameters required to create the PVSyst simulation, in the event that PVSyst electronic project files are no longer available. This section shall be populated and submitted with the Capacity Test Procedures.

PVSYST Model Files

The table below provides the file names for all model files necessary to run the PVSyst simulation in the PVSyst version specified in the subsequent section. Contractor shall provide all Project Capacity Model files to the Owner.

Table 1: PVSyst File Names

PVSyst File Type	File Name
Project file [PRJ, VC0] Including all variants	
Meteorological file [MET]	
Site file [SIT]	
Module file [PAN]	
Inverter file [OND]	
Shade file [SHD]	
Horizon file [HOR]	

PVSyst Input Parameters

In the event that data files are lost or corrupted, all PVSyst inputs and assumptions have been documented in this section. The table below provides many of the PVSyst inputs required in the simulation.

Table 2: PVSyst Input Parameters

Input Parameter	Value	Comment
PVSyst Software Version		
Transposition Model		
Meteorological File		It is critical that the time stamp and other parameters are accurately accounted for when importing meteorological data. Data import files and techniques shall be documented and provided with the Performance Test Report.
Latitude / Longitude		
Altitude [m]		

Input Parameter	Value	Comment
Array Orientation (PVSyst Field Type)		
Tilt		
Azimuth		0° is due South
Tracker Backtracking		
Min / Max Rotation Angle		
Number of sheds		
Ground Cover Ratio (GCR)		
Pitch [m]		
Collector width [m]		
Inactive band, Left (m)		
Inactive band, Right (m)		
Near Shading Type		
Electrical Effect		
Number of strings in row width		
Horizon		
Module Type		
Qty. of modules		
Qty. of modules per string		
Qty. of parallel strings		
Inverter Type		
Qty. of inverters		
Heat Transfer: Constant loss factor		
Heat Transfer: Wind loss factor		
DC circuit ohmic loss at STC		
Module Bifaciality Factor		From datasheet (not PAN file)
Module Quality		
Mismatch [%]		
LID – Light Induced Degradation [%]		
Soiling Loss [%]		Soiling will be assumed to be 1% for test unless a soiling station is installed, in which case the measured soiling will be used.
Incidence Angle Modifier Factors or ASHRAE b0 value		User defined profile
Rear Transparency		
Rear Shade Loss		
Rear Mismatch		
Module Mounting Height		
Surface Albedo		Measured during Capacity Test. If a reliable measurement is not available the assumed albedo in

Input Parameter	Value	Comment
		the Project Model will be used, exclusive of any adjustment for snow on the ground. If snow or partial snow on the ground occurs during the Capacity Test Measurement Period, provisions will be made to ensure measured albedo is representative of the albedo for the entire site or the data will be removed.
Auxiliary Loads [%]		
Nighttime Loads [%]		
AC circuit ohmic loss at STC [%]		
AC circuit MV ohmic loss at STC		If modeled in PVSyst
External MV Transformer No Load Loss [%]		If modeled in PVSyst
External MV Transformer Full Load Loss [%]		If modeled in PVSyst
AC circuit HV ohmic loss at STC		If modeled in PVSyst
External HV Transformer No Load Loss [%]		If modeled in PVSyst
External HV Transformer Full Load Loss [%]		If modeled in PVSyst

There are many additional settings required to recreate PVSysy files such as meteorological data import techniques, module file [PAN], inverter file [OND], etc. PVSyst version and model files will be placed in escrow to perform simulation. The files to be included in escrow include (a) all files listed in Table 1 of this Appendix 2 of Exhibit XX, and (b) a copy of PVSyst version X.

Additional Losses (Post-Processed Loss)

There are multiple losses associated with an operating Project that may not be accounted for in PVSYST or are modeled outside of PVSYT. Such losses may include AC losses, MV and HV transformer losses, night-time demand of inverters, as well as auxiliary loads including but not limited to HVAC, lighting, security, SCADA, etc. If these losses have been included in the modeled power generation and not included in PVSYST, the details are summarized below.

Table 3: Model Additional Loss

Parameter	Value	Comment
AC circuit ohmic loss [%]		
External Transformer Iron loss [%]		
External Transformer Resistive loss [%]		
External Transformer Nighttime disconnect		
Availability loss [%]		Not Included in Project Capacity Model
Curtailment loss [%]		Not included in Project Capacity Model

Parameter	Value	Comment
Auxiliary Loads [%]		
Nighttime Loads [%]		

Table 4: Example Monthly Reporting Conditions and Target Capacities Table

Month	Reference POA Irradiance (W/m^2)	Reference Ambient Temperature (°C)	Reference Wind Speed (m/s)	Target Capacity (kW)

APPENDIX 3 TO EXHIBIT H-2

Capacity Test Calculator

The table below provides the file names for all files needed for the Capacity Test Calculator. Contractor shall provide the Project Capacity Model Hourly Data file once the Project Capacity Model is complete. If the Project design changes significantly, the Project Capacity Model Hourly Data shall be updated by the Contractor to reflect the As Built design and such updated Project Capacity Model Hourly Data shall be submitted to the Owner for review and approval. All Changes to Project Capacity Model shall be documented and approved by the Owner.

Table 1: Capacity Test Calculator Files

File Name	File Type	Comments
Capacity Test Calculator	.xlxs	Used to calculate reporting conditions, regression coefficients, Measured Solar Capacity, and Target Capacity values
Project Capacity Model Hourly Data	.csv	Hourly Plane of Array (Global Incident in PVSYST), Ambient Temperature, Wind Speed, and Energy (after post processing, as necessary)

EXHIBIT H-3

PRODUCTION OUTPUT SPECIFICATION

TO BE FINALIZED AT 90% DESIGN

1. Annual Production

Production Estimate: Minimum 290,480 MWh per year

2. Monthly Design Performance Factor

See **Exhibit H-2** Performance Testing for further detail.

Month	Design Performance Factor (kWh_{AC}/kWh_{DC})
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	
Average	

Temperature Adjustment (from module spec sheet)

Adjustment: _____ %/°C

Module Efficiency (from module spec sheet)

Adjustment: _____ %

Total Array Area (from design documents)

Adjustment: _____ m^2

EXHIBIT I

PAYMENT SCHEDULE

Code & Cat	Client SOV	Description	Total	Check	August-25	September-25	October-25
		SOLAR	**$ 60,098,358.17**	**$ -**	**$ 1,500,000.00**	**$ -**	**$ -**
50001R	1	Pile Foundation Procurement	$ 5,130,949.05	$ -	$ -	$ -	$ -
50002R	2	Pile Foundation Installation	$ 3,036,177.53	$ -	$ -	$ -	$ -
50003R	3	Low Voltage Installation	$ 3,915,313.15	$ -	$ -	$ -	$ -
50004R	4	Medium Voltage Installation	$ 905,048.11	$ -	$ -	$ -	$ -
50005R	5	PCS Procurement	$ 8,534,898.40	$ -	$ -	$ -	$ -
50006R	6	Substation Engineering & Procurement (w/ GSU)	$ 9,319,800.00	$ -	$ 1,500,000.00	$ -	$ -
50007R	7	Substation Construction	$ 6,966,634.39	$ -	$ -	$ -	$ -
50008R	8	Racking System / Tracker Procurement	$ 14,053,187.38	$ -	$ -	$ -	$ -
50009R	9	Racking System / Tracker Installation	$ 3,022,874.19	$ -	$ -	$ -	$ -
50010R	10	Module Installation	$ 3,568,949.27	$ -	$ -	$ -	$ -
50011R	11	Final Testing & Cx	$ 1,028,130.56	$ -	$ -	$ -	$ -
50012R	12	Landscaping & Ground Cover	$ 616,396.14	$ -	$ -	$ -	$ -
		BATTERY	**$ 2,793,659.85**	**$ -**	**$ -**	**$ -**	**$ -**
50013R	13	Foundations	$ 1,017,938.50	$ -	$ -	$ -	$ -
50014R	14	BESS Low Voltage Installation	$ 293,861.15	$ -	$ -	$ -	$ -
50015R	15	BESS Medium Voltage Installation	$ 134,855.50	$ -	$ -	$ -	$ -
50016R	16	Grounding & Lightning Protection Installation	$ 185,717.69	$ -	$ -	$ -	$ -
50017R	17	Battery Installation	$ 291,753.11	$ -	$ -	$ -	$ -
50018R	18	Fire Detection Procurement	$ 26,027.65	$ -	$ -	$ -	$ -
50019R	19	Fire Detection Installation	$ 332,759.61	$ -	$ -	$ -	$ -
50020R	20	BESS Final Testing & Cx	$ 510,746.64	$ -	$ -	$ -	$ -
		BALANCE OF PLANT	**$ 34,181,721.20**	**$ -**	**$ 1,149,600.00**	**$ 2,024,318.10**	**$ 444,183.42**
50021R	21	Pre-Construction & Engineering	$ 2,667,308.43	$ -	$ 250,000.00	$ 197,716.58	$ 275,046.17
50022R	22	General Conditions	$ 9,294,777.10	$ -	$ 250,000.00	$ 142,810.78	$ 169,137.25
50023R	23	Medium Voltage Procurement	$ 1,012,197.16	$ -	$ 649,600.00	$ -	$ -
50024R	24	Low Voltage Procurement	$ 8,036,816.28	$ -	$ -	$ -	$ -
50025R	25	Earthwork	$ 6,154,912.41	$ -	$ -	$ -	$ -
50026R	26	Access & Interior Road Installation	$ 1,121,160.63	$ -	$ -	$ -	$ -
50027R	27	Fencing Installation	$ 1,271,384.81	$ -	$ -	$ -	$ -
50028R	28	SCADA & Communication	$ 997,898.87	$ -	$ -	$ -	$ -
50029R	29	Insurance/Bond	$ 1,683,790.74	$ -	$ -	$ 1,683,790.74	$ -
50030R	30	Mechanical Completion (1%)	$ 970,737.36	$ -	$ -	$ -	$ -
50031R	31	Substantial Completion (0.75%)	$ 728,053.05	$ -	$ -	$ -	$ -
50032R	32	Final Completion (0.25%)	$ 242,684.36	$ -	$ -	$ -	$ -
		MODULE/BATTERY MATERIALS	**$ 87,890,831.78**	**$ -**	**$ 2,270,484.00**	**$ -**	**$ -**
50033R	33	Modules	$ 48,486,729.78	$ -	$ 843,935.00	$ -	$ -
50034R	34	Batteries	$ 39,404,102.00	$ -	$ 1,426,549.00	$ -	$ -
		TOTAL	**$ 184,964,571.00**	**$ -**	**$ 4,920,084.00**	**$ 2,024,318.10**	**$ 444,183.42**
				Curve	2.66%	1.09%	0.24%

November-25	December-25	January-26	February-26	March-26	April-26	May-26	June-26	July-26
$ 853,489.84	**$ -**	**$ 340,023.10**	**$ 500,652.32**	**$ 5,225,899.82**	**$ 865,074.42**	**$ 995,786.96**	**$ 1,043,900.09**	**$ 995,786.96**
$ -	$ -	$ -	$ -	$ 1,026,189.81	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ 853,489.84	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ 340,023.10	$ 500,652.32	$ 686,413.16	$ 865,074.42	$ 995,786.96	$ 1,043,900.09	$ 995,786.96
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ 3,513,296.85	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	**$ 254,484.63**	**$ -**	**$ 26,027.65**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**
$ -	$ 254,484.63	$ -	$ -	$ -	$ -	$ -	$ -	$ -
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$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ 26,027.65	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ 523,280.80	**$ 864,468.00**	**$ 1,012,906.73**	**$ 1,159,980.70**	**$ 1,283,839.85**	**$ 1,362,974.05**	**$ 1,411,910.90**	**$ 1,341,033.49**	**$ 1,801,350.92**
$ 324,633.73	$ 346,288.72	$ 346,288.72	$ 324,602.75	$ 275,046.17	$ 197,716.58	$ 129,969.01	$ -	$ -
$ 198,647.07	$ 230,939.13	$ 265,383.55	$ 301,123.50	$ 337,097.37	$ 372,082.34	$ 404,757.97	$ 433,786.04	$ 457,900.03
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ 287,240.15	$ 401,234.46	$ 534,254.45	$ 671,696.31	$ 793,175.13	$ 877,183.92	$ 907,247.45	$ 877,183.92
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 466,266.97
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
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$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	**$ -**	**$ 4,004,737.98**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 3,797,755.30**	**$ -**
$ -	$ -	$ 4,004,737.98	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 3,797,755.30	$ -
$ 1,376,770.64	**$ 1,118,952.63**	**$ 5,357,667.81**	**$ 1,686,660.67**	**$ 6,509,739.67**	**$ 2,228,048.47**	**$ 2,407,697.86**	**$ 6,182,688.88**	**$ 2,797,137.88**
0.74%	0.60%	2.90%	0.91%	3.52%	1.20%	1.30%	3.34%	1.51%

August-26	September-26	October-26	November-26	December-26	January-27	February-27	March-27	April-27
$ 1,509,228.32	**$ 2,733,210.54**	**$ 2,146,508.08**	**$ 13,922,468.97**	**$ 7,838,184.21**	**$ 7,103,387.28**	**$ 3,348,856.47**	**$ 3,648,134.60**	**$ 2,764,572.70**
$ -	$ -	$ -	$ 2,052,379.62	$ 2,052,379.62	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ 358,174.56	$ 710,124.51	$ 899,579.40	$ 710,124.51	$ 358,174.55
$ -	$ -	$ -	$ 250,678.94	$ 414,307.41	$ 588,610.34	$ 704,059.89	$ 704,059.89	$ 588,610.34
$ -	$ -	$ -	$ 145,805.83	$ 306,718.23	$ 306,718.23	$ 145,805.82	$ -	$ -
$ -	$ 853,489.84	$ -	$ 5,974,428.88	$ -	$ 853,489.84	$ -	$ -	$ -
$ 865,074.42	$ 686,413.16	$ 500,652.32	$ 340,023.09	$ -	$ -	$ -	$ -	$ -
$ 644,153.90	$ 1,193,307.54	$ 1,645,855.76	$ 1,645,855.76	$ 1,193,307.54	$ 644,153.89	$ -	$ -	$ -
$ -	$ -	$ -	$ 3,513,296.85	$ 3,513,296.85	$ 3,513,296.83	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ 486,993.64	$ 1,024,443.46	$ 1,024,443.46	$ 486,993.63
$ -	$ -	$ -	$ -	$ -	$ -	$ 574,967.90	$ 1,209,506.74	$ 1,209,506.74
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ 121,287.44
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ 33,363.12	**$ 322,613.90**	**$ 360,786.02**	**$ 674,271.15**	**$ 536,753.24**	**$ 459,001.94**	**$ 126,358.20**	**$ -**	**$ -**
$ -	$ 254,484.63	$ 254,484.63	$ 254,484.61	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ 72,700.95	$ 148,459.25	$ 72,700.95	$ -	$ -	$ -
$ 33,363.12	$ 68,129.27	$ 33,363.11	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ 45,946.37	$ 93,824.95	$ 45,946.37	$ -	$ -	$ -
$ -	$ -	$ 72,938.28	$ 218,814.83	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ 82,324.39	$ 168,110.83	$ 82,324.39	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ 126,358.21	$ 258,030.23	$ 126,358.20	$ -	$ -
$ 2,081,507.92	**$ 2,310,061.55**	**$ 2,795,835.99**	**$ 3,033,611.35**	**$ 2,476,105.93**	**$ 1,470,377.22**	**$ 771,971.13**	**$ 742,943.06**	**$ 532,846.68**
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ 475,996.24	$ 487,217.37	$ 491,019.83	$ 487,217.37	$ 475,996.24	$ 457,900.03	$ 433,786.04	$ 404,757.97	$ 372,082.34
$ -	$ -	$ 89,706.17	$ 183,184.82	$ 89,706.17	$ -	$ -	$ -	$ -
$ 793,175.13	$ 671,696.31	$ 534,254.45	$ 401,234.46	$ 287,240.14	$ -	$ -	$ -	$ -
$ 812,336.55	$ 1,151,147.87	$ 1,295,409.64	$ 1,151,147.87	$ 812,336.55	$ 466,266.96	$ -	$ -	$ -
$ -	$ -	$ 180,622.18	$ 379,958.14	$ 379,958.14	$ 180,622.17	$ -	$ -	$ -
$ -	$ -	$ 204,823.72	$ 430,868.69	$ 430,868.69	$ 204,823.71	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ 160,764.35	$ 338,185.09	$ 338,185.09	$ 160,764.34
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
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$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	**$ -**	**$ 11,393,265.90**	**$ -**	**$ 18,988,776.50**	**$ 10,796,011.21**	**$ 22,046,034.38**	**$ 10,796,011.21**	**$ -**
$ -	$ -			$ -	$ 10,796,011.21	$ 22,046,034.38	$ 10,796,011.21	
$ -	$ -	$ 11,393,265.90	$ -	$ 18,988,776.50	$ -	$ -	$ -	$ -
$ 3,624,099.36	**$ 5,365,885.99**	**$ 16,696,395.99**	**$ 17,630,351.47**	**$ 29,839,819.88**	**$ 19,828,777.65**	**$ 26,293,220.18**	**$ 15,187,088.87**	**$ 3,297,419.38**
1.96%	2.90%	9.03%	9.53%	16.13%	10.72%	14.22%	8.21%	1.78%

May-27	June-27	July-27	August-27	September-27	October-27	November-27	December-27
$ 1,229,742.37	**$ 863,498.54**	**$ 548,665.14**	**$ 121,287.44**	**$ -**	**$ -**	**$ -**	**$ -**
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ 414,307.41	$ 250,678.93	$ -	$ -	$ -	$ -	$ -	$ -
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$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ 574,967.89	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ 240,467.07	$ 304,621.54	$ 240,467.07	$ 121,287.44	$ -	$ -	$ -	$ -
$ -	$ 308,198.07	$ 308,198.07	$ -	$ -	$ -	$ -	$ -
$ -	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**
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$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ 337,097.37	**$ 301,123.50**	**$ 1,236,120.91**	**$ 230,939.13**	**$ 926,700.12**	**$ 169,137.24**	**$ 385,495.14**	**$ -**
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ 337,097.37	$ 301,123.50	$ 265,383.55	$ 230,939.13	$ 198,647.07	$ 169,137.24	$ 142,810.78	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
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$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ 970,737.36	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ 728,053.05	$ -	$ -	$ -
$ -	$ -	$ -	$ -	$ -	$ -	$ 242,684.36	$ -
$ -	**$ -**	**$ -**	**$ 3,797,755.30**	**$ -**	**$ -**	**$ -**	**$ -**
$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
$ -	$ -	$ -	$ 3,797,755.30	$ -	$ -	$ -	$ -
$ 1,566,839.74	**$ 1,164,622.04**	**$ 1,784,786.05**	**$ 4,149,981.87**	**$ 926,700.12**	**$ 169,137.24**	**$ 385,495.14**	**$ -**
0.85%	0.63%	0.96%	2.24%	0.50%	0.09%	0.21%	

EXHIBIT J

SITE DESCRIPTION

In San Juan County, New Mexico

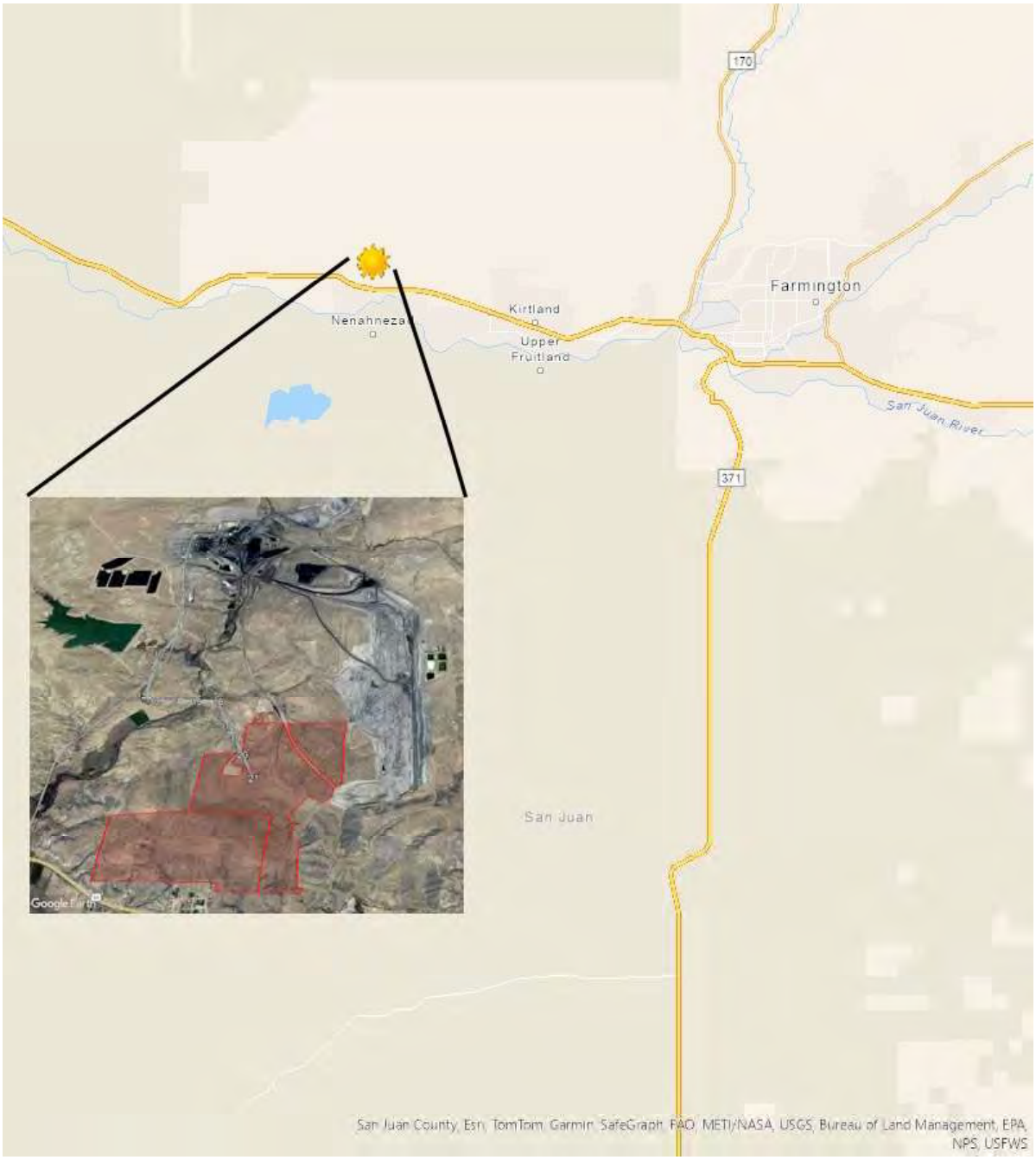


EXHIBIT K

SPECIFIED SUPPLIERS AND SPECIFIED SUBCONTRACTORS

1. APPROVED SUPPLIERS

PV Modules	Jinko
	Boviet
	Trina
	Hanwha Q-Cells
	Canadian Solar
	Longi
	GCL
	JA Solar
	First Solar
	Hyundai
	NE Solar
	SEG Solar
	Adani Solar
Inverters	Sungrow
	TMEIC
	Power Electronics
	Siemens
	Gamesa
	Ingeteam
Battery Energy Storage Systems	Tesla
	LG Electronics
	Sungrow
	BYD
	Hithium
	Trina
Racking Structure (1-Axis Tracker)	Array Technologies, Nextracker, or PV Hardware
Transformers	JSHP
	Cooper
	ABB

	Eaglerise
	WEG
	TTE
Interconnection Substation	ECI / EPCS
	PACK POWER Dashiell
Cable (MV, LV, AUX)	KBI (MV, LV, AUX)
	WTEC (MV, LV, AUX)
	American Wire Group (AWG)
	Priority Wire & Cable (PWC) (LV, AUX)
	Apar (MV, LV, AUX)
	Service Wire (Ground, LV)
	TE (DC Collection) (LV)
	Encore Wire (LV, AUX)
	Prysmian Group (MV, LV, AUX)
	Huaxing Cable (MV, LV, AUX)
	Voltage (MV, LV, AUX)
Foundations	Unimacts
	Power House Partners (PHP)
	Karamtara
	WTEC
	Push Pak
	Valmont
	Nucor
MVT	JSHP
	Eagle Rise
	Maddox
	WEG
	TTE
Gear	MCXP Solutions
	Spike Electric
	Siemens
	Square D
	Federal Pacific

2. APPROVED SUBCONTRACTORS

To be confirmed	Civil Works
WTEC AUI ArrayCon RMCI	Foundation Execution
NEI Engineering Fractal PVH Indie Energy Trimark	SCADA Design & Engineering, Plant Commissioning
Electric Power Systems Electrical Reliability Services - Vertiv	NETA testing
RMCI Sacramento Drilling	Structural Contractor

EXHIBIT L

SITE ASSUMPTIONS

The following Site Assumptions shall apply to the Site:

1. No archeological, paleontological, historical, religious and/or cultural finds or artifacts.

2. No sensitive, protected, endangered or threatened species.

3. No pre-existing Hazardous Materials or other environmental contaminants requiring remediation by the Contractor

4. Site/grade is undeveloped, tolerance of finished grading as shown below:

o Design Criteria - For Uniform Grade:

- Existing Grade – vegetation grubbed
- Maximum slope shall be 8.5% or as specified in tracker documentation

5. Compaction of the soil needs to be 90% maximum dry density within a moisture content range of +/- 2% of optimum moisture as determined by ASTM D698 pending pile test.

6. Soil conditions that allow at least 80% of standard steel posts ("H piles") to be driven directly into soil without imposing structural damage or deflection of pile placement and with the ability to withstand compressive and uplift forces of solar module systems. Required depth below grade to be determined by geotechnical study, but typically 5 feet but not greater than 7 feet.

7. Minimum bearing capacity 1000 pounds/sq. foot.

8. No water table within 10 feet of finished grade.

9. Soil up lift resistance (to pile) equal to or greater than 1000 pounds at a maximum pile depth of six feet.

10. Soil lateral resistance (to pile) equal to or greater than 4000 pounds imposed at a distance of 6 inches above grade with a maximum deflection of 0.5 inches at grade.

11. No unidentified existing utilities, easements, rights of way, improvements or existing structures which inhibit construction of the Project.

12. 90 mph wind speed as depicted in Fig 6-1 of the American Society of Civil Engineers (ASCE 7-16) code.

13. Unrestricted access to the Site 24 hours per day, seven days per week for the duration of construction and commissioning in two locations to allow for entering and exiting of vehicles; provided that Contractor shall provide Owner with reasonable prior notice of the need for access to the Site during any hours other than normal working hours (as such normal working

hours are set forth in the Work Schedule) and Owner shall make Commercially Reasonable Efforts to accommodate such requests for access to the Site. To the extent that Owner is unable to accommodate any such reasonable requests, the provisions of Article 16 of the Agreement shall apply.

14. Contractor shall provide access to the Site from public roadway to the gate, via a well-maintained, flat, level and compacted (90 - 95% density surface) and stabilized access road capable of withstanding commercial (e.g., semi-trailers) and construction grade vehicle traffic.

15. Upon completion, interior roads at the Site shall stabilized with 4" of gravel, or some other Owner-approved medium, and compacted to 90 - 95% density.

16. Interconnection point at the Rio Puerco Substation or dead-end structure provided by Transmission Provider within or adjacent to the Transmission Provider's Interconnection Facilities and voltage at 115 kV.

EXHIBIT M

FORMS OF BONDS

Bond No.

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:
(Name, legal status and address)

,

OWNER:
(Name, legal status and address)

, US|

SURETY:
(Name, legal status and principal place of business)

,
Mailing Address for Notices

,

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT
Date:

Amount: $

Description:
(Name and location)

BOND
Date:
(Not earlier than Construction Contract Date)

Amount: $

Modifications to this Bond: [X] None [ ] See Section 16

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature: _____		Signature: _____	
Name and Title:		Name and Title:	Attorney-in-Fact
			Surety Phone No.

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

,

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

,

S-1852/AS 8/10

§ 1The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

.1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner docs not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

.2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

.3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§6.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

.1 the responsibilities of the Contractor for correction of defective work and completion of the_ Construction Contract;
.2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section *5;* and
.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or *5.4,* the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that arc unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the
provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law-bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature: _____		Signature: _____	
Name and Title:		Name and Title	
Address		Address	

Bond No.

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)

CONSTRUCTION CONTRACT
Date:

Amount: $

Description:
(Name and location)

BOND
Date:
(Not earlier than Construction Contract Date)

Amount: $

Modifications to this Bond: ☐ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature:		Signature:	
Name and Title:		Name and Title:	

Attorney-in-Fact

Surety Phone No.

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

S-2149/AS 8/10

§ **1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ **2** If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ **3** If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§**4** When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ **5** The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ **5.1** Claimants, who do not have a direct contract with the Contractor,

.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

.2 have sent a Claim to the Surety (at the address described in Section 13).

§ **5.2** Claimants, who arc employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ **6** If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ **7** When a Claimant has satisfied the conditions of Sections *5.1* or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ **7.1** Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§**7.2** Pay or arrange for payment of any undisputed amounts.

§ **7.3** The Surety's failure to discharge its obligations under Section 7.l or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. lf, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ **8** The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ **9** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work..

§**10** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that arc unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ **11** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ **12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date **(1)** on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service w s performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph arc void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ **13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ **14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ **16** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ **16 Definitions**

§ **16.1 Claim.** A written statement by the Claimant including at a minimum:

- **.1** the name of the Claimant;
- **.2** the name of the person for whom the labor was done, or materials or equipment furnished;
- **.3** a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- **.4** a brief description of the labor, materials or equipment furnished;
- **.5** the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- **.6** the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- **.7** the total amount of previous payments received by the Claimant; and
- **.8** the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ **16.2 Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§**16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ **16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§**16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ **17** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ **18** Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature: _____		Signature: _____	
Name and Title:		Name and Title:	
Address		Address	

WARRANTY BOND

KNOWN ALL BY THESE PRESENTS: That we_____, as Principal, and_____, a corporation organized and existing under the Laws of the State of_____, as Surety, are held and firmly bound unto_____, as Obligee, in the total sum of _____ U.S. Dollars (_____) for the payment whereof said Principal and Surety bind themselves, jointly and severally, as provided herein.

WHEREAS, the Principal entered into a contract with the Obligee dated_____for _____("Work").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall maintain and remedy said Work free from defects in materials and workmanship for a period of _____year(s) commencing on (the "Warranty Period"), then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that any suit under this bond shall be commenced no later than one (1) year from the expiration date of the Warranty Period; provided, however, that if this limitation is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law, and said period of limitation shall be deemed to have accrued and shall commence to run on the expiration date of the Warranty Period.

SIGNED this_____day of_____,

_____. (Principal)

By: _____

By: _____
Attorney-in-Fact

(to be finalized prior to execution of the EPC contract)

EXHIBIT N

SMALL BUSINESS SUBCONTRACTING PLAN

EXHIBIT O

SPARE PARTS LIST

The following list of spare parts shall be provided to the Owner upon Substantial Completion of the Project.

- Spare Parts shall be delivered to an Owner-designated storage facility.
- Cost of Spare Parts shall be the responsibility of the Contractor.
- "%" as the Unit shall mean a given percentage of the installed quantity of the referenced material. Any values that equate to less than one (1) physical unit shall have one (1) spare part purchased.

Item/Equipment	Unit	Qty. Required
PV Modules		
Crystalline modules	%	0.3%
Module clamps (mid and end)	%/Module	0.0075%
Field Wiring and Balance of System		
DC homerun wire for each type/size used	FT	TBD
MC4 (or equivalent) connector pairs (M & F)	%/Module	0.0027%
DC string fuse for each type used	%	1.0%
Ferrules and lugs	%	1.0%
Low voltage (<1000V) fuses for each size/type used	%	1.0%
AC Breaker for each size/type used	%	1.0%
Low voltage AC wiring for each size/type used	FT	TBD
Nuts and bolts commonly used throughout the System (SAE & Metric)	%/Module	0.0037%
Inverter		
Complete inverter spare	EA	1
Inverter replacement fans	EA	1 per Inverter
PV input fuses for each type used	EA	6 per Inverter
Inverter manufacturer recommended spare parts		TBD
Transformers		
Medium voltage BESS transformer	EA	1
Generator step-up transformer (and containment)	EA	1
Data Acquisition System		
RJ45 connectors	EA	2
Low voltage communication wiring for each type used	FT	50
Low voltage communication crimps for each type used (typically gel-filled)	EA	5
Racking		
Tracking motors (tracking only)	EA	1 per 20 motors
Garmins	EA	2
Tracker Driveline Couplers	EA	1%
Inclinometers (tracking only)	EA	1 per 60 motors
Cold galvanizing compound spray can	EA	1 per MW
Mastic Tape (1" wide, min. 100 mil), or other approved edge protection	FT	25 per MW
Connecting hardware for 1 table of modules (typically 1 string lengthwise)	EA	1

Miscellaneous		
Vacuum breaker, mounted for quick connection	EA	1
BESS recommended spares per manufacturer		TBD
Additional spare parts per Industry Standards		TBD

BESS & Substation - Spare Parts List

Qty	Unit	Description
		Power Transformer
1	EA	FANS
1	EA	GASKET SET
1	EA	HV BUSHINGS
1	EA	LV BUSHINGS
		CTs, PTs, CCVTs
1	EA	CTs
3	EA	PTs
3	EA	CCVTs
		High Voltage Breaker
1	EA	HV Breaker
1	EA	Control Relay, 3NO 3NC (125 VDC)
1	EA	Trip/Close Coil, 125VDC
1	EA	Charging Motor, 125V
1	EA	HV Breaker Bushing
		Medium Voltage Breaker
1	EA	MV Breaker
1	EA	Control Relay, 3NO 3NC (125 VDC)
1	EA	Trip/Close Coil, 125VDC
1	EA	Charging Motor, 125V
		34.5kV Arresters
2	EA	Surge Arrester, station class, 24.4kV MCOV, 65kA minimum pressure relief capability, 7kJ/kV of MCOV minimum energy capability, 37” min creep, polymer housing, gapless, metal oxide type, with NEMA 4-hole pad.
		Fuses
1	EA	Outdoor Fuse Unit, 34.5kV nominal, 1A standard speed, for use with Item AF420H
3	EA	Outdoor Fuse Unit, 34.5kV nominal, 5E standard speed, for use with Item AF420H
2	EA	120/240VAC, 600A Fuse
2	EA	125VDC, 200A Fuse
		BESS Yard
1	EA	Square D circuit breaker 15A
1	EA	Summit Electrical Supply -
1	EA	BAYONET FUSE 38KV - COOPER (3x)
1	EA	CURRENT LIMITING FUSE 38KV 140A HI-TECH

9	EA	Class J fuses for fused disconnect (For Rodeo Only)
5	EA	3 Pole EDB Type breaker (or series rated with class J fuses equivalent)
5	EA	3 Pole EDB Type breaker (or series rated with class J fuses equivalent)
2	EA	3 Pole EDB Type breaker (or series rated with class J fuses equivalent)
2	EA	2 Pole EDB Type breaker (or series rated with class J fuses equivalent)
3	EA	Aux Transformer Bayonet fuse
1	EA	3000 kVA 34.5kV/480V Transformer (WEG datasheet or similar)
4	EA	UPS Breakers 15A/2P ABB
16	EA	DLO 2 hole 1/2" stud lug
6	EA	MV Terminations T-bodies
3	EA	Oudoor Termination Kit 750 kcmil Shearbolt 2 Hole NEMA Lugs

EXHIBIT P

MODULE WARRANTY TERMS AND CONDITIONS

[*To be provided after approved design*]

EXHIBIT Q

FORM OF CHANGE IN WORK FORM

CHANGE IN WORK FORM

Project:	Photovoltaic power generation facility with a proposed Minimum Gross Capacity of 100 MW co-located with a 30 MW ESS, located in San Juan County, New Mexico
Contract:	Engineering, Procurement and Construction Agreement by and between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("**Owner**") and GRIDWORKS INC. ("**Contractor**")
Change In Work #:	[●]
Date of Change In Work:	[●]

The undersigned agree to the following change to the Engineering, Procurement and Construction Agreement, dated as of October 29, 2024, (the "**Agreement**"), by and between Owner and Contractor. Initially capitalized terms used but not defined herein shall have the respective meanings given in the Agreement.

The changes to the Agreement that are described below (collectively the applicable Change In Work) are considered an amendment to the Agreement. With the exception of the Change In Work, this Change In Work Form does not relieve Owner or Contractor of their responsibilities and obligations described in the Agreement or otherwise modify the rights of Owner or Contractor under the Agreement. The below adjustments to the Agreement terms will constitute a full and complete settlement for the Change In Work which is the subject of this Change In Work Form, unless otherwise provided in the detailed description below.

Detailed description of the requested Change In Work and reason for request:

_____

_____

_____

_____

Detailed description of the effect of the Change In Work on the Agreement:

_____

_____

_____

_____

Description of attached documentation establishing the Change In Work cost of performing the work other than a change in the Contract Price. If there is no change in cost, state "none":

_____

_____

_____

_____

Description of the change in the Contract Price:

The original Contract Price is: $ [●]

The change in the Contract Price is: $ [●]

The revised Contact Price (including the Change In Work set forth herein) is: $ [●]

The method used in determining the change in Contract Price is indicated on the attached Schedule 1.

Changes to the Work Schedule, Milestone Items and Substantial Completion Guaranteed Date are set forth below. If there is no change in the Work Schedule, Milestone Items and Substantial Completion Guaranteed Date, state "none":

_____

_____

_____

_____

The revised Substantial Completion Guaranteed Date (taking into consideration the Change In Work set forth herein and all other prior Changes In Work) is: [●]

Requested By:	**Accepted and Agreed To:**
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____

Schedule 1 to Change In Work Form

Method used in determining the change in Contract Price

[●]

EXHIBIT R

DATA POINTS

To be finalized during design review conference (Exhibit B, 3.9.8)

Sample List
Site SCADA should collect and transfer the following data points:
To SCADA: (DNP3 slave port on EPC Contractor ICS)

Analog Points

1. KW
2. KVA
3. KVAR
4. Va
5. Vb
6. Vc
7. IRRADIANCE_GHI_AVG
8. IRRADIANCE_POA_AVG
9. WINDSPEED_AVG
10. WINDDIR_AVG
11. TEMP_AVG
12. BP_AVG

Status Points

1. Breaker Status
2. Relay Trip

Counters

1. kWh Received from Grid
2. kvarh Received from Grid
3. kWh Delivered to Grid
4. kvarh Delivered to Grid

To Data Historian/Web Dashboard

Inverters:

1. Inverter AC Real Power (kW)
2. Inverter DC Input Power (kW)
3. Inverter AC Cumulative Energy (kWh)
4. Inverter DC Input Current (A)
5. Inverter DC Input Voltage (V)
6. Inverter Matrix A Temperature (°C)
7. Inverter Matrix B Temperature (°C)
8. Inverter Commanded Active Power
9. Limit (kW/%)
10. Inverter Commanded Reactive Power
11. Limit (kvar/%)
12. Inverter Phase A Voltage (V)
13. Inverter Phase B Voltage (V)
14. Inverter Phase C Voltage (V)
15. Inverter Phase A Current (A)

16. Inverter Phase B Current (A)
17. Inverter Phase C Current (A)
18. Inverter AC Reactive Power (kvar)
19. Inverter AC Apparent Power (kVA)
20. Inverter Phase to Phase Voltage A-B (V)
21. Inverter Phase to Phase Voltage B-C (V)
22. Inverter Phase to Phase Voltage C-A (V)
23. Operational Status (Int/text)
24. Fault Code from the Inverter (Int/text)

Meteorological Station

1. Global Horizontal Irradiance (W/m^2)
2. Direct Normal Irradiance (W/m^2)
3. Diffuse Normal Irradiance (W/m^2)
4. Daily accumulation of rain (mm)
5. Surface Wind Speed (m/s)
6. Surface Wind Direction (°)
7. Ambient air temperature (°C)
8. Barometric Pressure (kPa)
9. Relative Humidity (%)

Soiling Stations

1. Soiling Station Parameters
2. Current for Unwashed Module (A)
3. Current for Washed Module (A)
4. Soiling Module Measured (%)
5. Irradiance (W/m^2)

Tracker Actuators

1. Tracker Equipment Status (Boolean)
2. Actuator Roll Angle (°)
3. Actuator Motor Current (A)

Tracker Controllers

1. Optimal Roll Angle (°)
2. Stow Status of Trackers (Boolean)

Tracker Plane of Array Irradiance (W/m^2)

DC Current Transducers- Combiner Box (or string)

1. DC Current (A)

PCS, Substation Control Building, Site Communication Center (SCC)

1. Primary Air Conditioning - Cumulative Run Time (Hours)
2. Secondary Air Conditioning - Cumulative Run Time (Hours)
3. Air Temperature (°C)
4. Smoke Detector Status (Boolean)
5. Door Open Alarm

Transformers

1. Transformer Core Temperature (°C)
2. Transformer Oil Reservoir Pressure (kPA)
3. Transformer Oil Level Status (Boolean)

Energy Meters (ALL Including Revenue, Check & Block)

1. Net Power at the Plant (or Block) Meter (kW)
2. Power Received by the Grid from the Plant (or Block) (kWh)
3. Power Delivered by the Grid to the Plant (or Block) (kWh)
4. Reactive Power at the Plant (or Block) Meter (kW)
5. Power Factor at the Plant (or Block) meter (%)
6. Reactive Energy Delivered by the Grid to the Plant (or Block) (kWh)
7. Reactive Energy Received by the Grid to the Plant (or Block) (kWh)
8. Phase A Voltage at the Plant (or Block) Meter (V)
9. Phase B Voltage at the Plant (or Block) Meter (V)
10. Phase C Voltage at the Plant (or Block) Meter (V)
11. Phase A Current at the Plant (or Block) Meter (A)
12. Phase B Current at the Plant (or Block) Meter (A)
13. Phase C Current at the Plant (or Block) Meter (A)
14. Apparent Power at the Plant (or Block) Meter (kW)
15. Phase to Phase Voltage A-B at the Plant (or Block) meter (V)
16. Phase to Phase Voltage B-C at the Plant (or Block) meter (V)
17. Phase to Phase Voltage C-A at the Plant (or Block) meter (V)

Reference Modules

1. Reference Module Measured Irradiance (W/m^2)
2. Reference Module Measured Temperature (°C)
3. Module Surface Temperature (°C)

Power Plant Controller (PPC)

Relay

1. Relay Operation
2. Any metering data available from the relay
3. Any microprocessor relay's self-check functions

Main Breaker

1. Main Breaker Status (Open/Close)
2. Main Breaker SF6 Pressure
3. Main Breaker Controls

MOD

1. Motor Operated Disconnect Status (Open/Close)
2. Motor Operated Disconnect Control

HV/MV Breaker

1. HV/MV Breaker (Open/Close)
2. HV/MV Breaker SF6 Pressure (Dry Contact/Data)

Reactive Power

1. Cap Bank Indication
2. Inductor Bank Indication

EXHIBIT S

FORM OF CONTRACTOR'S INVOICE

APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER:

PROJECT:

APPLICATION NO.:
PERIOD TO :
PROJECT NOS.:
INVOICE NO.:
CONTRACT DATE :
DUE DATE:

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐
☐

FROM CONTRACTOR: Gridworks, Inc.
3900 Singer Blvd. NE
Albuquerque, NM 87109

ARCHITECT:

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation sheet is attached.

1. ORIGINAL CONTRACT SUM (Incl. Taxes) . . . . . $
2. Net change by change orders (Incl. Taxes). . . . . $
3. CONTRACT SUM TO DATE (Line1 +/- 2) . . . . . $
4. TOTAL COMPLETED & STORED TO DATE . . . . $
(Incl. Taxes)(Column G on G703)
5. RETAINAGE:
(Total retainage Column I of G703) . . . . . $
6. TOTAL EARNED LESS RETAINAGE . . . . . $
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) . . . . . $
8. CURRENT PAYMENT DUE . . . . . $
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) $

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Change Order approved in previous months by Owner			
APPROVED THIS MONTH			
Number	Date Approved		
Current Total:			**0.00**
Net Change by Change Orders			

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for payment were issued and payments received from the Owner, and that current payment shown herein is now due.

Contractor: Gridworks, Inc.

By: _____ Date: _____

State of: _____

County of: _____

Subscribed and sworn to before

me this _____ day of _____

Notary Public: _____

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of Work is in accordance with the Contract Documents, and the Contractor is entitled to the payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED.....$ _____

(Attach explanation If amount certified differs from the amount applied for. Initial figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

Gridworks, Inc.

CONTINUATION

APPLICATION AND CERTIFICATE FOR PAYMENT, containing
Contractor's signed Certification is attached.
In tabulation below, amounts are stated to the nearest cent.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER:
APPLICATION DATE:
PERIOD TO:
PROJECT NO:

INVOICE NO.:

A	B	C	D	E	F		G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED (D+E)		MATERIAL PRESENTLY STORED	TOTAL TAXES TO DATE	TOTAL COMPLETED AND STORED TO DATE	PER-%(G/C)	BALANCE TO FINISH	RETAINAGE
			FROM PREVIOUS APPLICATION	THIS PERIOD						
1012	NTP									
1014	Mobilization									
1016	Storage Canopy Construction									
1017	Module Delivery									
1020	Mechanical Completion									
1025	Substantial Completion									
1027	Final Completion									
1030	Change Orders									
1031	Change Orders - Non-Taxable									
	Project Total:									

EXHIBIT T

PV MODULE MANUFACTURER'S INSTALLATION MANUAL

[*To be provided after approved design*]

EXHIBIT U

FENCING SPECIFICATION

Contractor shall perform installations identified as:

Perimeter Fence

Contractor shall install perimeter fencing 1-foot inside property boundaries per Owner's specifications:

a. Installation of 8' Galvanized Chain Link Fence topped with 3 Strands of Barbed Wire

   i. Fabric - The chain link fence fabric shall be helically woven into a 2-inch diamond mesh using #9 gauge wire. Fabric shall have standard finish with either a) twisted and barbed selvage at top and bottom or b) knuckle selvage at top and barbed selvage at bottom. Fence fabric shall be installed with a ground clearance not to exceed two (2) inches at any point. Where required to meet ground clearance requirements, fill materials must be compacted or stabilized as to not allow for degradation by other than natural water shedding.

   ii. Top and Brace Rails – Size of pipe shall be 1-5/8" in diameter, Schedule 40. Brace rails located at all corners and ends. Top rail to be along the entire perimeter.

   iii. Line Posts - Size of pipe shall be 2-inch diameter, Schedule 40, with OD being 2-3/8" and a minimum wall thickness of 0.130". Line posts shall be spaced 10 feet apart and set in 10"x36" cement footings.

   iv. Terminal Posts (End, Corner and Pull Posts) - Posts shall be 3-1/2", Schedule 40 pipe with OD being 4" and a minimum wall thickness of 0.226". Terminal posts shall be set in 12"x36" cement footings. Posts shall be set back 1 foot from property boundary.

   v. Barbed Wire - Three strands of barbed wire on top of fence around entire perimeter including gates. Barbed wire should slope outward, except for gates, where it will rise vertically.

b. Installation of 12' Double Swing Gate (24' total opening)

   i. Gates – Gates shall be 8' chain link topped with three (3) strands barbed wire. Gates shall be swing type, hinged to swing 180 degrees from closed to open, complete with frames, latches, stops, keepers, hinges, fabric, braces and three strands of barbed wire. They shall have a 1-1/2 inch, Schedule 40 (1.90" OD) pipe frame.

   ii. Grate frames shall be of welded construction or shall be assembled using fittings. When fittings are used as the construction method for gate frames, the frames shall be fitted with 5/16-inch, minimum, diameter truss rods. The frames shall be galvanized or be zinc-coated by the hot dip or metal spray method after fabrication. When frames are not galvanized or zinc-coated after fabrication, a zinc rich paint shall coat all welds.

   iii. All gates shall be constructed so that one person may operate them and include a permanent "hold open" device, such as a "duckbill" catch.

   iv. Gates will be held in the closed position by an attached drop rod entering into center stop secured in a concrete base. Gate will also include a 3/8" or thicker chain, permanently attached to one gate, of sufficient length to encircle both gate frames and be secured with a padlock.

Exclusion Area Fence

If specified, Contractor shall install exclusion area fencing per Owner specifications:

a. Installation of 4' T-Post Single Wire Fence

   i. T-Posts – Size of steel T-bar shall be at least 1-1/2" x 1-1/2" x 6', not weighing less than 1.25 pounds per linear foot. T-posts shall be spaced no more than 30 feet apart and vertically driven, at a minimum, 24" into the ground, leaving 4' visible. T-posts shall be studded to prevent clips from slipping and shall incorporate an anchor plate, welded near the base, to minimize sideways and rotational movement. T-posts shall be galvanized or coated with rust-resistant enamel for

corrosion protection. Ends and corners shall be braced for stability as needed. Reflective markers shall be attached at least every 150 feet to increase visibility.

ii. Wire – A single strand of aluminum or galvanized steel wire attached to T-Bar near the second stud from the top using either aluminum or galvanized steel clips.

Entryway Barbed Wire Fence

If specified, Contractor shall install a section entryway barbed wire fencing per Owner specifications:

a. Installation of 4' Three Strand Barbed Wire Fence

i. T-Posts – Size of steel T-bar shall be at least 1-1/2" x 1-1/2" x 6', not weighing less than 1.25 pounds per linear foot. T-posts shall be spaced 10 feet apart and vertically driven, at a minimum, 24" into the ground, leaving 4' visible. T-posts shall be studded to prevent clips from slipping and shall incorporate an anchor plate, welded near the base, to minimize sideways and rotational movement. T-posts shall be galvanized or coated with rust-resistance enamel for corrosion protection. Reflective markers shall be attached at least every 20 feet.

ii. Barbed Wire - Three strands of barbed wire, spaced in roughly 16" intervals, measured from ground.

Grounding (minimum requirement)

Where fences or gate pass under or run parallel to overhead power lines, appropriate grounding should be used. Grounding typically consists of 5/8" x 10' copper jacketed grounding rods, #2 solid copper conductor, and necessary grounding clamps and crimpets.

Copper conductor should be woven through the chain link mesh and attached with 3 – 4 crimpets. Where topped with barb wire, conductor should also be attached to each strand with a crimpet.

a. Traversing Overhead Lines

i. One ground should be centered below the overhead wires, and another should be place 20ft apart on each side.

b. Running Parallel to Overhead Lines

ii. Grounds should be placed at 50ft intervals for as long as fencing runs less than 100ft from the centerline of the overhead power lines.

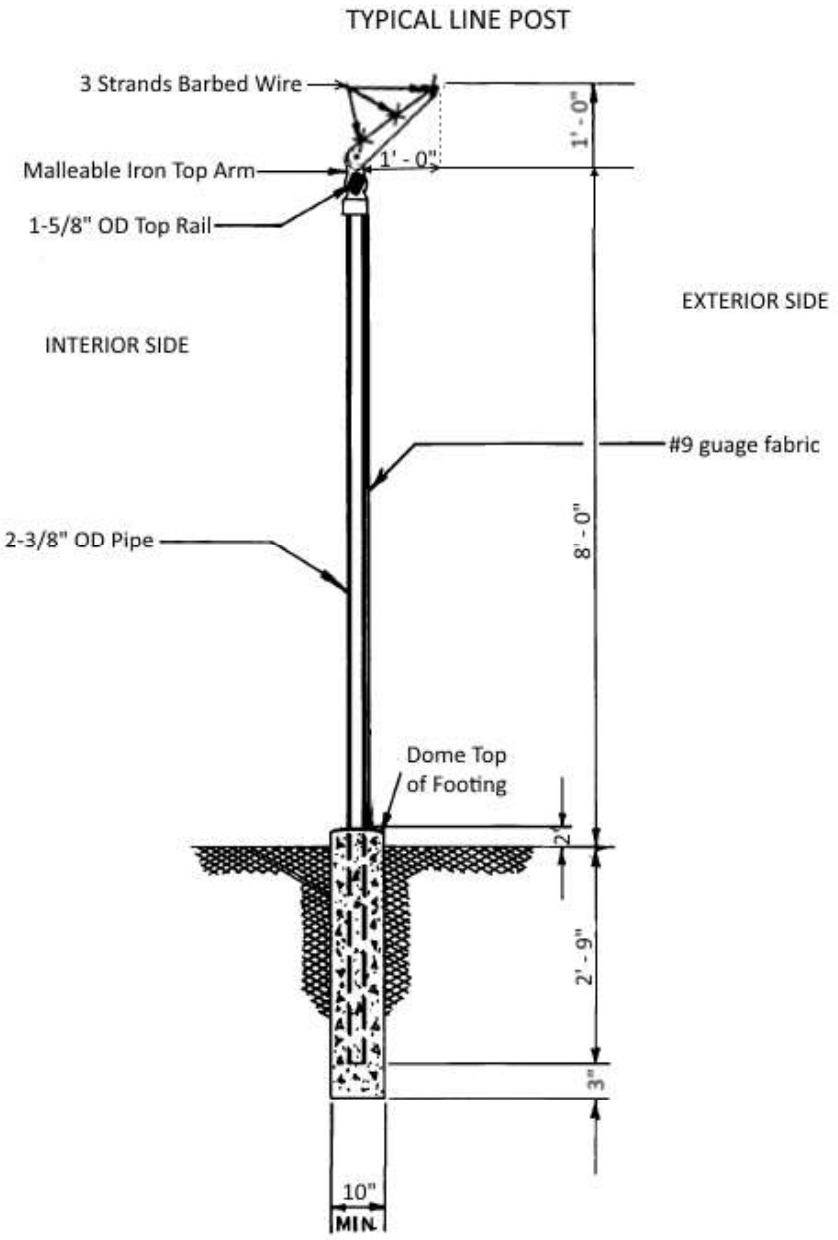
Site Cleaning

The Contractor shall perform site cleaning:

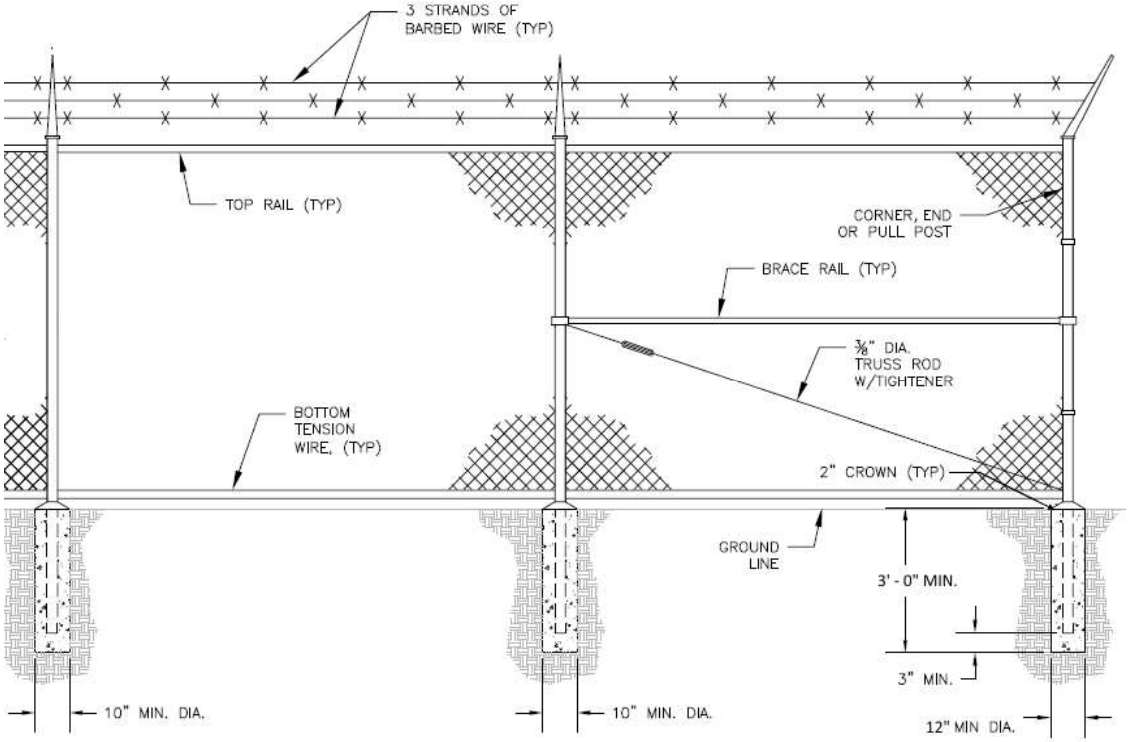
a. Remove excess fencing and other construction material and haul to the designated off-site disposal area.

i. Procurement of an off-site disposal area shall be the responsibility of the Contractor.

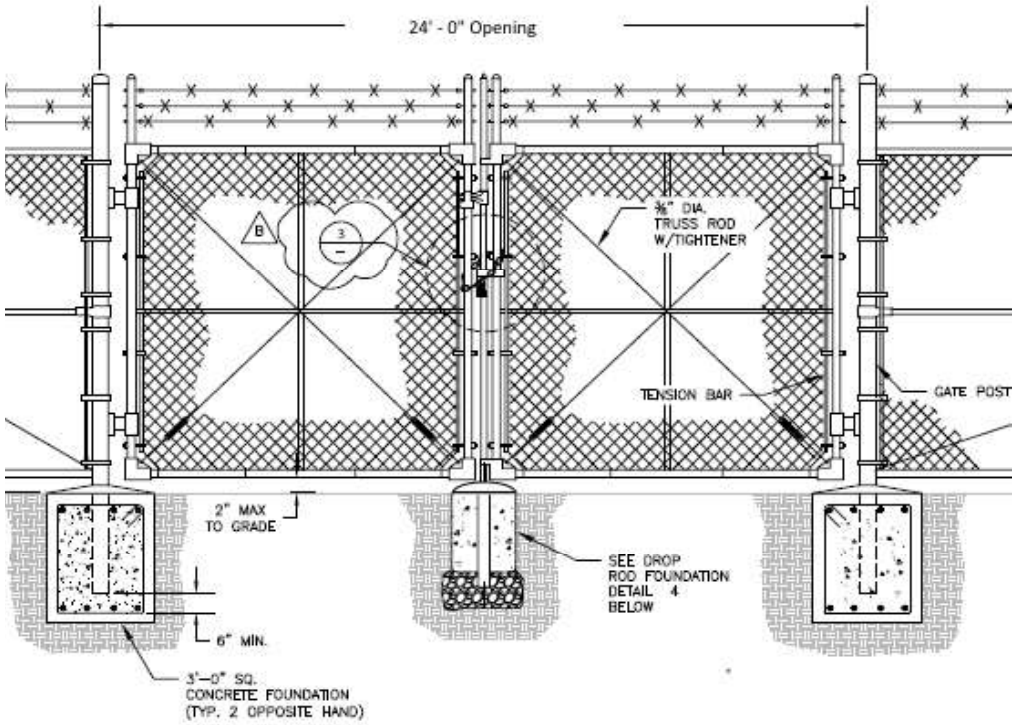
The Contractor will provide all permits, materials, labor and equipment necessary to fence the perimeter of the property. Owner will work with Contractor to determine the locations of any needed entryway or exclusion area fencing and the gate location. Prior to installation, the Contractor and an Owner representative will conduct a site visit.



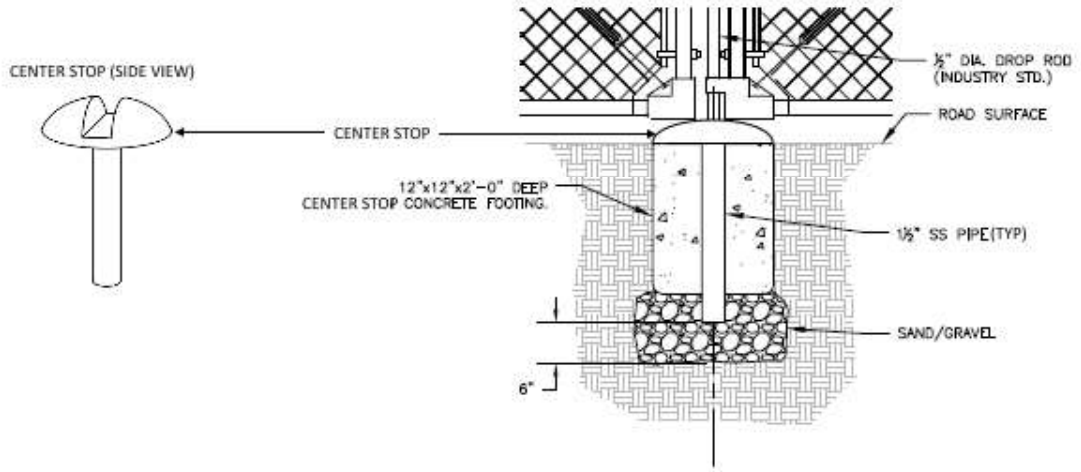
LINE AND TERMINAL POSTS



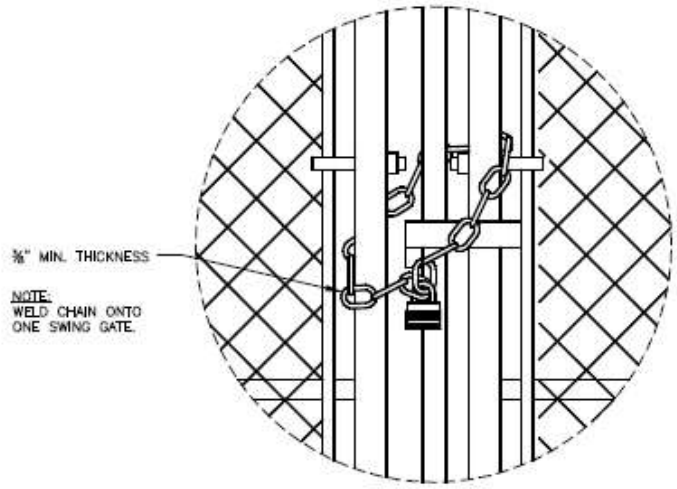
GATE



DOUBLE – SWING GATE DETAIL 1
SCALE: NTS

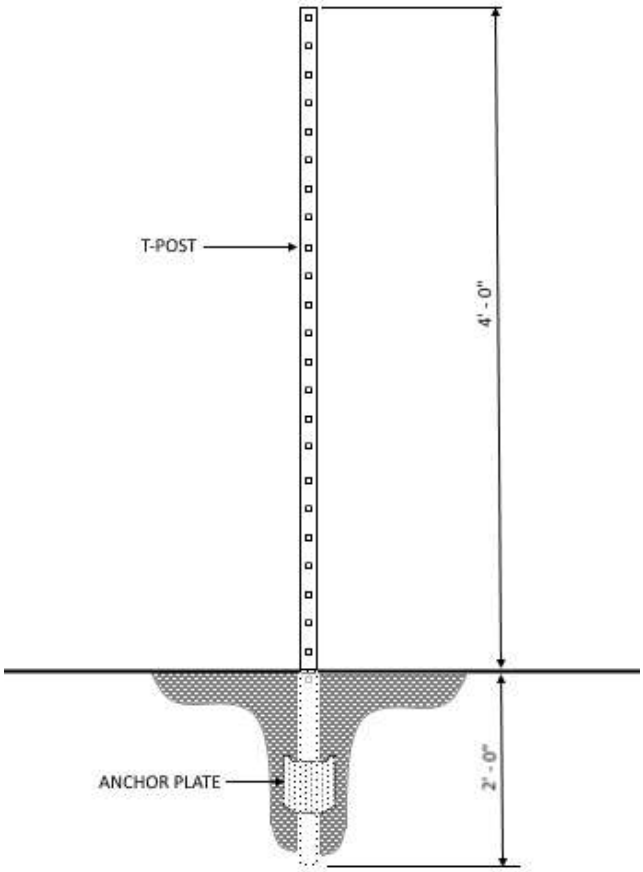


DOUBLE GATE DROP ROD FOUNDATION DETAIL 3
SCALE: NTS

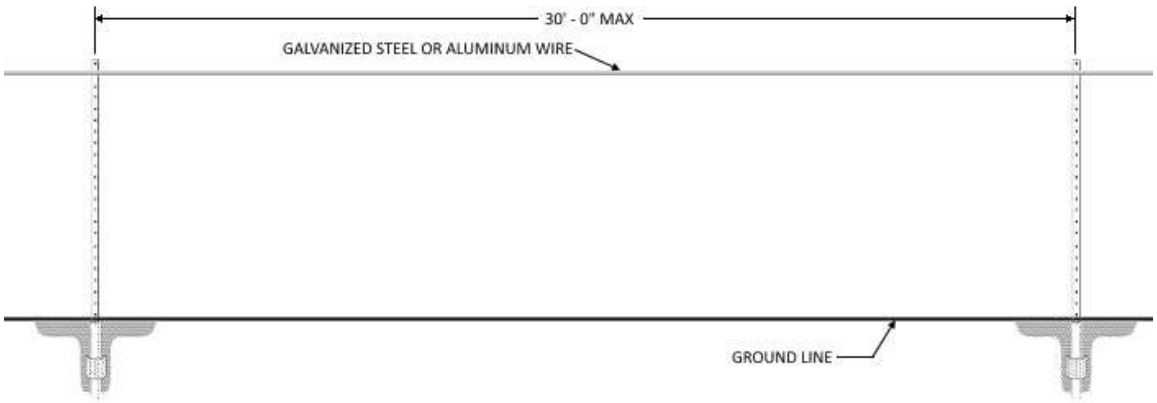


DOUBLE – SWING GAGE AND LOCK 4
SCALE: NTS

TYPICAL T-POST



EXCLUSION AREA FENCE



ENTRYWAY BARBED WIRE FENCE

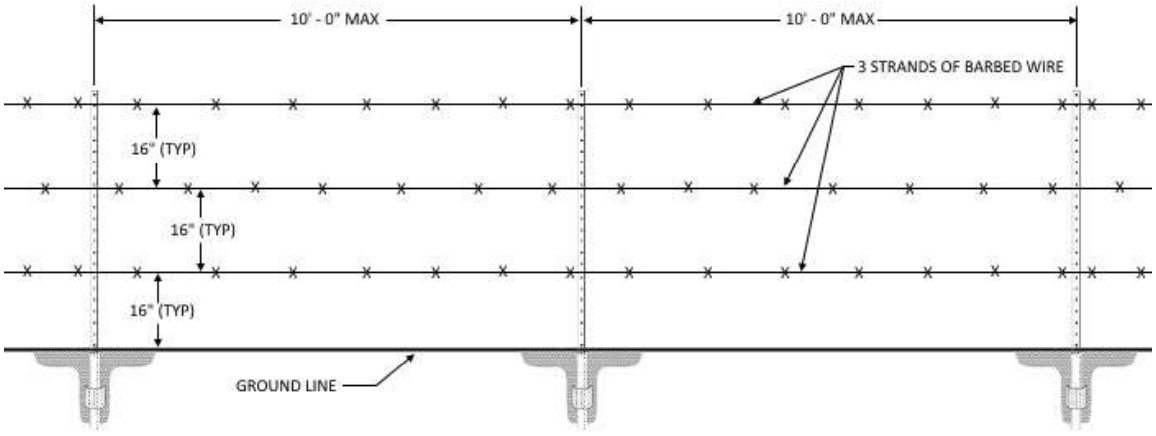


EXHIBIT V

ESS COMMISSIONING TESTS

Commissioning Tests

A. Automatic Generation Control (AGC) Functionality Test (or equivalent)
B. SCADA Functionality Test (or equivalent)
C. Owner Control and Data Link Functionality Tests (See Exhibit A-1, Section 2.16)
D. ESS Solar Capacity Firming Test
E. ESS Unit Capabilities Tests
F. Tesla's Performance Testing (Exhibit C-6 of the Tesla Sale and Purchase Agreement)

The following tests shall be conducted and satisfied as a requirement to achieve Substantial Completion. The performance of these tests and the final testing protocol will be discussed by the Owner and Contractor after NTP and will also incorporate the protocols and procedures addressed in Tesla's Performance Testing Exhibit C-6 as part of the Tesla Sale and Purchase Agreement for the BESS Equipment. Where the Tesla Performance Testing Exhibit differs from the testing protocol herein, the Parties will work in good faith to resolve any discrepancies and satisfy the requirements of the ESA.:

A. Automatic Generation Control (AGC) Functionality Test

Purpose:
This test will demonstrate the ability of the ESS to synch to AGC.

System starting state:
The ESS will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("**EMS**") shall be configured to follow a predefined, agreed-upon active power profile.

Procedure:

1. Record the ESS active power level at the ESS "**Electric Metering Device**" (defined for purposes of this Agreement as an ION meter that meets the current PNM Interconnection Metering Standard along with a GPS clock with IRIG output, and this meter shall be used for closed loop control of the System to fulfill IEEE 1547:2018 compliance as well as to measure the performance metrics. The meter refresh time shall be the fastest allowable polling rate. ESS supplier to provide design recommendations on meter part number and CT/PT accuracy class requirements).
2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.
3. Command the ESS to follow a simulated AGC charging signal every four (4) seconds for ten (10) minutes.
4. Record and store the ESS active power response (in seconds).

System end state:
The ESS will be in the on-line state and at a commanded active power level of 0 MW.

B. SCADA Functionality Test

Owner shall prepare and submit to Contractor a SCADA Functionality Test procedure no later than 60 Days prior to the expected Substantial Completion Date. Contractor shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Substantial Completion.

C. Owner Control and Data Link Functionality Test

Owner shall prepare and submit to Contractor an Owner Control and Data Link Functionality Test procedure no later than 60 Days prior to the expected Substantial Completion Date. Contractor shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Substantial Completion.

D. ESS Solar Capacity Firming Test

Contractor shall perform a test of the ESS control system to validate its capability to maintain a constant energy delivery from the combined PPA and ESA to the Point of Delivery. The test shall be performed over a three (3) hour test period given a fixed MW setpoint at the Point of Delivery from the integrated PV Power Plant and ESS. The test shall validate the ability of the ESS control system to autonomously charge solar generation or discharge to maintain a constant POD output within two (2) percent of the output setpoint and

within the limits of the ESS Unit Capabilities and ESS Operating Restrictions. The constant POD setpoint shall be between the ESS PMAX and the POD rating minus PMAX or reasonably adjusted according to the solar generation forecast on the day of the test. The test shall be deemed successful if the ESS is able to regulate the POD to the output setpoint, within two (2) percent, over all one minute averaged time intervals during the three (3) hour test when the charging or discharging of the ESS to maintain the output setpoint would not violate the ESS Unit Capabilities or ESS Operating Restrictions.

E. Commissioning Tests

The following tests shall be conducted as a requirement to achieve the Substantial Completion Date.

F. ESS Unit Capabilities Testing

F.1 ESS Capacity Test

F.1.1 General

The ESS Capacity Test ("**ESS Capacity Test**" or "**ECT**") is a test performed to determine the ESS Capacity and Roundtrip Efficiency (RTE). The ESS Capacity Test performed prior to Substantial Completion shall be conducted in accordance with Industry Standards and the provisions of this Exhibit V. Owner or its representative may be present for ECT and may, for informational purposes only, use its own metering equipment (at Owner's sole cost).

F.1.2 Requirements Applicable to all ESS Capacity Tests

A. Purpose of Test. ECT shall:

(1) verify compliance with the Guaranteed ESS Capacity or otherwise determine any lower ESS Capacity for the purposes of this A; and

(2) determine the Roundtrip Efficiency (RTE) of the ESS;

B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

(1) discharge time (minutes);

(2) ESS Charging Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy In**");

(3) ESS Discharge Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy Out**");

(4) ESS Discharge Energy measured at the ESS Electric Metering Device including the accounting of losses from the ESS Electric Metering Device to the Point of Delivery, in MWh ("**Point of Delivery Energy Out**"); and

(5) ESS Charging Energy measured at the ESS Electric Metering Device accounting for losses from the Point of Delivery to the ESS Electric Metering Device, in MWh ("**Point of Delivery Energy In**");

C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at five (5)-minute intervals.

D. Test Elements and Sequence. Each ECT shall include the following test elements:

(1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);

(2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Metering Device, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or Four and 21/100th (4.21) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by the actual discharge time or Four and 21/100th (4.21) shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

(3) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after Four and 21/100th (4.21) hours of discharging the Guaranteed ESS Capacity;

(4) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity; and

(5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

(1) General. At all times during an ECT, the ESS shall be operated in compliance with Industry Standards, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. The ECT shall commence within one (1) hour after sunset or other such time as mutually agreed by the Parties, and the PV Power Plant shall be disconnected prior to commencement of such ECT. Owner, in coordination with customer and the transmission provider, may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Owner may postpone or reschedule all or part of such ECT in

accordance with Section E.1.2.F of these ESS Capacity Test Procedures.

(3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Contractor shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Owner's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) forty-five (45) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.

(4) Instrumentation and Metering. Contractor shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.

F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section E.1.2.E(2) of this ESS Capacity Test Procedure), Contractor may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Owner reasonably objects to such results, Owner may require that the ECT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Contractor is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Owner or the Transmission Provider, Contractor shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within ten (10) Business Days after the completion of any ECT, Contractor shall prepare and submit to Owner a written report of the results of the ECT, which report shall include:

(1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for the ESS Electric Metering Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;

(3) The ESS Capacity as determined by the ECT, including supporting calculations; and

(4) Contractor's statement of either Contractor's acceptance of the ECT or Contractor's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Owner shall notify Contractor in writing of either Owner's acceptance of the ECT results or Owner's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section E.1.2.F of this ESS Capacity Test Procedure.

H. Supplementary ESS Capacity Test Protocol. No later than sixty(60) days prior to the Substantial Completion Date, Contractor shall deliver to Owner for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the ESS Facility (collectively, the "**Supplementary ESS Capacity Test Protocol**"). Thereafter, from time to time, Contractor may deliver to Owner for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Contractor-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Owner, shall be deemed an amendment to this Exhibit F.

I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first Four and 21/100th (4.21) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) Four and 21/100th (4.21) hours) shall be divided by Four and 21/100th (4.21) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.

J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$Roundtrip\ Efficiency\ (\%) = \frac{ESS\ Meter\ Energy{-}Out\ (MWh{-}AC)}{ESS\ Meter\ Energy{-}In\ (MWh{-}AC)} \times 100\%$$

F.2 ESS Response Delay Test

Purpose of Test:

1. Determine the Charge Ramp Rate of the ESS
2. Determine the Discharge Ramp Rate of the ESS

Test Conditions:

The ESS Facility will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. This test shall not cause the ESS to charge from the grid.

Test procedure:

Measured Charge Ramp Rate:

1. Send an active power charge command of PMAX to charge the batteries

2. The time measured from when the ESS receives the PMAX charge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of charge PMAX shall be the Charge Ramp Latency
3. The time measured to ramp from 1% to charge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate

Measured Discharge Ramp Rate:

1. Send an active power discharge command of PMAX to discharge the batteries
2. The time measured from when the ESS receives the PMAX discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge PMAX shall be the Discharge Ramp Latency
3. The time measured to ramp from 1% to discharge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate

Determination of ESS Response Delay:

The calculation below will demonstrate the determination of the ESS Response Delay used to determine ESS Response Delay Damages according to Section 15.4.1.

a) An "Actual System Latency" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency = Max(Charge\ Ramp\ Latency, Discharge\ Ramp\ Latency)$$

b) An "Actual System Latency Delay" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency\ Delay = Max(Guaranteed\ System\ Latency, Actual\ System\ Latency) - Guaranteed\ System\ Latency$$

c) An "Actual Discharge Ramp Rate Delay" shall be calculated, which shall be equal to:

$$Actual\ Discharge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Discharge\ Ramp\ Rate, Actual\ Discharge\ Ramp\ Rate) - Guaranteed\ Discharge\ Ramp\ Rate$$

d) An "Actual Charge Ramp Rate Delay" shall be calculated, which shall be equal to:

$$Actual\ Charge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Charge\ Ramp\ Rate, Actual\ Charge\ Ramp\ Rate) - Guaranteed\ Charge\ Ramp\ Rate$$

e) The "Charging ESS Response Delay" shall be calculated, which shall be equal to:

$$Charging\ ESS\ Response\ Delay = Actual\ Charge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

f) The "Discharging ESS Response Delay" shall be calculated, which shall be equal to:

$$Discharging\ ESS\ Response\ Delay = Actual\ Discharge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

g) The "ESS Response Delay" shall be calculated, which shall be equal to:

$$ESS\ Response\ Delay = Max(Charging\ ESS\ Response\ Delay, Discharging\ ESS\ Response\ Delay)$$

For any instance in which the ESS Response Delay, as measured by the ESS Electric Metering Device is a positive value during an ESS Unit Capabilities Test, Contractor shall pay to Owner the ESS Response Delay Damages identified in Section 15.4.1.

Exhibit C-6
Performance Testing

1. Overview.

(a) *Overview*. This Exhibit C-6 outlines the standard performance testing protocol ("Test") used to evaluate the System.

(b) *Key Terms*. The following Key Terms will apply to this Exhibit C-6:

Performance Guarantees:		
Guaranteed Power Capacity:	30,236 kW at the Point of Measurement.	
Guaranteed Energy Capacity:	126,277 kWh at the Point of Measurement.	
Guaranteed Roundtrip Efficiency:	90.8% at the Point of Measurement.	
Roundtrip Efficiency Floor:	78% at the Point of Measurement.	
Energy Cost:	$50/MWh	
Roundtrip Efficiency Buydown:	Has the meaning given in Section 2(f), below.	
Roundtrip Efficiency Buydown: Cap:	$4,600,000	
Additional Key Terms:		
Apparent Power Capacity:	33,998 kVA at the Point of Measurement	
Line and Transformation Losses:	No more than: 1.25% real power and 7.00% reactive power losses. Note: % real power and % reactive power loss is function of the Apparent Power Capacity specified above. For example, 1.5% real power loss is equivalent to 1.5 kW for 100 kVA System. Similarly, 6.5% reactive power loss is equivalent to 6.5 kVAR for 100 kVA System.	
Point of Measurement (POM):	Buyer furnished and installed SEL 735 battery meter located at 34.5 kV (the "System Meter")	
Grid Voltage:	Nominal Grid Voltage (at Megapack's inverter terminals)	480 V_{AC}

	Voltage Requirement for full power operation (at Megapack's inverter terminals)	1.0 p.u. minimum 1.0 p.u. maximum
Maximum Design Temperature:	40.0°C as determined from ASHRAE Climatic Design Conditions 2017.	
Weather Station	ALBUQUERQUE INTL, NM, USA (WMO: 723650) . Used to monitor Relative Humidity, Pre-Test Hourly Average Ambient Temperature and Maximum Hourly Average Ambient Temperature. The weather station can be any station in the vicinity of the site and should be agreed upon between the Parties prior to the test.	

(c) Additional Definitions.

The terms in this Section 1(c) have the following meanings, when used in connection with the Test.

Available Charge Power	The estimated power that can be charged into the batteries, as reported by the Tesla System Controller.
Available Discharge Power	The estimated power that can be discharged from the batteries, as reported by the Tesla System Controller.
Battery Energy Exported	The System's export energy as measured at the Point of Measurement by the System Meter and reported by the Tesla System Controller.
Battery Energy Imported	The System's import energy as measured at the Point of Measurement by the System Meter and reported by the Tesla System Controller.
Battery Real Power	The System's instantaneous total 3 phase real power as measured by the System Meter at the Point of Measurement and reported by the Tesla System Controller.
CT Error	The error of the current transformer during the Test according to its accuracy class.
Maximum Hourly Average Ambient Temperature	The maximum of hourly average ambient temperature recorded during the Test.
Actual Charge Power Capacity	The average of the Battery Real Power values measured during the charge portion of the Test excluding ramping period.
Actual Energy Capacity	The total energy (in MWh) discharged by the System when it is charged and discharged in accordance with the below procedure.
Actual Discharge Power Capacity	The average of the Battery Real Power values measured during the discharge portion of the Test excluding ramping period.
Actual Roundtrip Efficiency	The ratio of the energy discharged by the System to the energy used to charge the System when the System is charged and discharged in accordance with the below procedure.
Meter Error	The error of the System Meter during the Test according to its accuracy class.

Metering System Error	The error of all meters used during the Test according to its accuracy class and is calculated as follows Metering System Error = $\sqrt{(Meter\ Error^2 + CT\ Error^2 + PT\ Error^2)}$
Pre-Test Hourly Average Ambient Temperature	The hourly average ambient temperature recorded prior to the commencement of the Test as measured by Weather Station.
PT Error	The error of the potential transformer during the Test according to its accuracy class.
Real Power Ramp Rates	The maximum rate of change of the Battery Real Power (kW) set for the System.
Relative Humidity	The ratio, expressed in percent, of the amount of atmospheric moisture present relative to the amount that would be present if the air were saturated as measured by Weather Station.
State of Energy (SOE)	The state of energy as calculated by dividing the "Energy Remaining" by the "Full Pack Energy" signals as reported by the Tesla System Controller.

2. General Requirements.

(a) *Meters*.

Buyer shall procure and install SEL 735 meter along with a GPS clock with IRIG output, and this meter shall be used for closed loop control of the System to fulfill IEEE 1547:2018 compliance as well as to measure the performance metrics. The meter refresh time shall be the fastest allowable polling rate. Tesla to provide design recommendations on meter part number and CT/PT accuracy class requirements.

To the extent possible, Tesla reasonably requests that the Buyer validates the individual accuracy of the System Meter and its CTs and PTs. Buyer shall promptly recertify the individual accuracy of the System Meter and its CTs and PTs and provide evidence of same to Tesla.

Buyer shall provide all instrumentation, metering, and external data collection equipment required for the Test. Instrumentation shall include all instruments permanently installed at the Project and the temporary instruments suggested by Tesla or deemed necessary by Buyer in its sole judgement.

(b) Line and Transformation Losses.

Buyer shall ensure that the Line and Transformational Losses between the AC terminals of the System and the POM shall not exceed the real power and reactive power losses set forth in Section 1(b), taking into account all electrical losses, including cabling, switchgear, impacts of specified Voltage Requirement and transformer losses (load and no load).
If the actual Line and Transformational losses exceed either or both of real power and reactive power losses defined above, Tesla shall be entitled to reductions in the Performance Guarantees to the extent the combination of real and reactive components of actual Line and Transformational Losses compromises the System's ability to meet respective Performance Guarantees.

(c) Voltage Requirement.

Test should be conducted in accordance with the Voltage Requirements specified in the Key Terms. If the Nominal Grid Voltage is lower or higher than specified, Buyer shall try to adjust the voltage at the POM and System AC terminals to be equivalent to the specified values in the Key Terms. Tesla shall be entitled to reductions in the Performance Guarantees to the extent the change in Voltage Requirement compromises the System's ability to meet the respective Performance Guarantees. The methodology for determining such reductions shall be agreed upon between both parties ahead of the Test following detailed design of the System.

(d) Data Collection and Recording.

The values indicated in the Test shall be collected and recorded by the Tesla System Controller with timestamps at a frequency of at least once per second. The data collected and recorded by the Tesla System Controller are used to calculate whether the Performance Guarantees are met.

(e) *Test Procedures*.

All Tests shall be performed by a Tesla employee or a third party approved by Tesla. If any Performance Guarantee is not met the first time a Test is performed, the Test may be repeated until such Performance Guarantee is achieved. Once a Performance Guarantee is met, it shall be deemed met regardless of achievement of other Performance Guarantees. Buyer shall bear the cost of energy to charge the System in connection with a Test, and shall be entitled to any revenue resulting from the Test.

(f) *Test Report*.

Tesla shall provide a Performance Test Report documenting the results of each Test within five (5) Business Days of Test completion.

3. Performance Test Protocol.

(a) *Purpose*.

Demonstrate that the Actual Charge Power Capacity, Actual Discharge Power Capacity, Actual Energy Capacity, and Actual Roundtrip Efficiency of the System equals or exceeds the Guaranteed Power Capacity, Guaranteed Energy Capacity, and Guaranteed Roundtrip Efficiency, respectively.

(b) *Pre-Test Conditions*.

Prior to the commencement of the Test:

1. The Pre-Test Hourly Average Ambient Temperature shall be between 20°C (68°F) and 30°C (86°F) and hourly average Relative Humidity shall be less than 70% for at least 12 hours. This condition can be waived at Tesla's sole discretion.

2. If the forecasted or actual Pre-Test Hourly Average Ambient Temperature is below 20°C (68°F) during the 12 hours prior to the Test, the System shall be pre-heated for 8 hours prior to the test (Heat Mode is activated).

3. If the Pre-Test Hourly Average Ambient Temperature is above 30°C (86°F) and the hourly average Relative Humidity is greater than 70% during the 12 hours prior to the Test, then the Test shall be postponed until a time when such conditions have subsided for at least 12 hours.

4. The System shall be kept idle for 2 hours between 10% - 25% SOE to allow SOE calibration.

5. If during the Test, the Maximum Hourly Average Ambient Temperature is higher than Maximum Design Temperature, then following temperature adjustments shall be applied to Guaranteed Energy Capacity.

   (a) Maximum Design Temperature < Maximum Hourly Average Ambient Temperature <= 50°C (122°F): 99.0% of Guaranteed Energy Capacity

6. If during the Test, the Maximum Hourly Average Ambient Temperature is higher than 25°C (77°F), then the following temperature adjustments shall be applied to the Guaranteed Roundtrip Efficiency of the System:

(a) 25°C (77°F) < Maximum Hourly Average Ambient Temperature <= 30°C (86°F): 99.7% of Guaranteed Roundtrip Efficiency

(b) 30°C (86°F) < Maximum Hourly Average Ambient Temperature <= 35°C (95°F): 99.0% of Guaranteed Roundtrip Efficiency

(c) 35°C (95°F) < Maximum Hourly Average Ambient Temperature <= 40°C (104°F): 98.0% of Guaranteed Roundtrip Efficiency

(d) 40°C (104°F) < Maximum Hourly Average Ambient Temperature <= 50°C (122°F): 97.0% of Guaranteed Roundtrip Efficiency

7. If the Maximum Hourly Average Ambient Temperature > 50°C (122 °F), then the Test will be postponed until a time when the temperature is expected to remain below 50°C (122°F) for a minimum of 24 hours.

8. If the Buyer, utility, or independent system operator requires a specified ramp rate, the ramp rate shall be so configured, and the energy charged and discharged during the ramp shall be accounted for in the calculation of the Actual Roundtrip Efficiency and Actual Energy Capacity.

9. Reactive Power control mode is set to OFF. If not possible, Tesla shall be entitled to reductions in the Guaranteed Values to the extent keeping reactive power control turned ON compromises the System's ability to meet the applicable Performance Guarantee. The methodology for determining such reductions shall be agreed upon between both parties ahead of the Test following detailed design of the System.

10. Frequency Support shall be disabled. If not possible, Tesla shall be entitled to reductions in the Guaranteed Values to the extent the change in grid frequency compromises the System's ability to meet the applicable Performance Guarantee. The methodology for determining such reductions shall be agreed upon between both parties ahead of the Test following detailed design of the System.

11. The System reports Available Discharge Power that is equal to or greater than the Guaranteed Power Capacity, adjusted to account for Line and Transformational Losses.

12. The System reports Available Charge Power that is equal to or greater than the Guaranteed Power Capacity, adjusted to account for Line and Transformational Losses.

(c) *Test Procedure*.

1. Discharge until the System's SOE reaches 0% or the Available Discharge Power is zero.

2. Allow the System to idle fully discharged for 5 minutes. The System shall remain grid-connected during the rest period.

3. Send a charge command equal to the Guaranteed Power Capacity. As the Tesla System Controller receives the charge command, record time T1: start of charge.

4. Hold the charge command. Once the System's Battery Real Power first reaches the Guaranteed Power Capacity, record time T2: end of the ramp (charge).

5. Hold the charge command. As the System gets close to end of charge, the absolute value of the System's Battery Real Power will drop and remain below 98% of the Guaranteed Power Capacity (for example, if command is -100 MW, the Battery Real Power should be between 0 MW and -98 MW continuously). Once the System's Battery Real Power is 98% or less of the Guaranteed Power Capacity continuously, record time T3: end of steady state charge.

6. Hold the charge command. Once the System's Available Charge Power is equal to zero, record time T4: end of charge.

7. Allow the System to idle fully charged for up to 5 minutes. The System shall remain grid-connected during the rest period.

8. Send a discharge command equal to the Guaranteed Power Capacity. As the Tesla System Controller receives the discharge command, record time T5: start of discharge.

9. Hold the discharge command. Once the System's Battery Real Power first reaches the Guaranteed Power Capacity, record time T6: end of ramp (discharge).

10. Hold the discharge command. As the System gets close to end of discharge, the System's Battery Real Power will drop and remain below 98% of the Guaranteed Power (for example, if command is 100 MW, the Battery Real Power should be below 98 MW continuously). Once the System's Battery Real Power is 98% or less of the Guaranteed Power Capacity continuously, record time T7: end of steady state discharge

11. Hold the discharge command. Once the System's Available Discharge Power is zero, record time T8: end of discharge.

(d) *Recorded Values*.

1. Average of Battery Real Power (kW), as measured at the System Meter from T2 to T3

2. Average of Battery Real Power (kW), as measured at the System Meter from T6 to T7

3. Battery Energy Imported (kWh), as measured at the System Meter at T1

4. Battery Energy Imported (kWh), as measured at the System Meter at T4

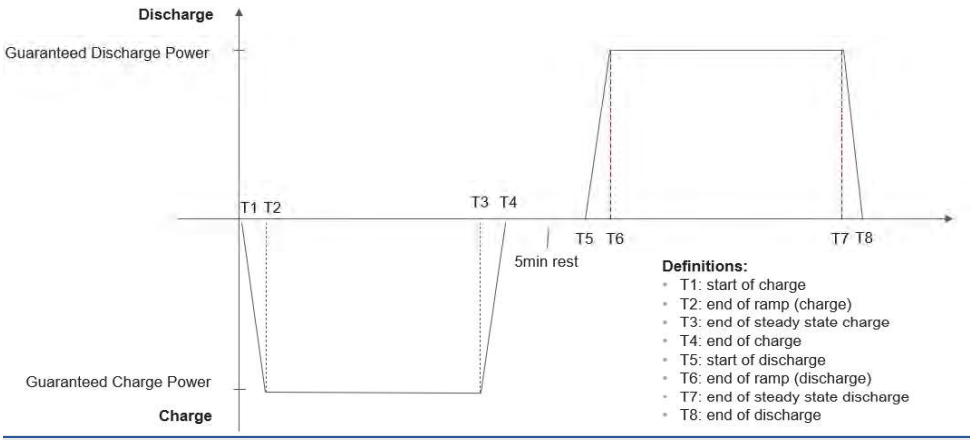
5. Battery Energy Exported (kWh), as measured at the System Meter at T5

6. Battery Energy Exported (kWh), as measured at the System Meter at T6

7. Battery Energy Exported (kWh), as measured at the System Meter at T7

8. Battery Energy Exported (kWh), as measured at the System Meter at T8

Timestamps T1 to T8 as represented below:



(e) *Acceptance Criteria*.

1. Guaranteed Power Capacity

$$|Actual\ Charge\ Power\ Capacity| \geq Guaranteed\ Power\ Capacity * (1 - Metering\ System\ Error)$$

$$Actual\ Discharge\ Power\ Capacity \geq Guaranteed\ Power\ Capacity * (1 - Metering\ System\ Error)$$

Where:

Actual Charge Power Capacity is the average of the Battery Real Power between times T2 and T3
Actual Discharge Power Capacity is the average of the Battery Real Power between times T6 and T7

2. Guaranteed Energy Capacity

$$Actual\ Energy\ Capacity \geq Guaranteed\ Energy\ Capacity * (1 - Metering\ System\ Error)$$

Where, if no Real Power Ramp Rates are configured:

$$Actual\ Energy\ Capacity = Battery\ Energy\ Exported\ (T7) - Battery\ Energy\ Exported\ (T6)$$

Where, if Real Power Ramp Rates are configured:

$$Actual\ Energy\ Capacity = Battery\ Energy\ Exported\ (T8) - Battery\ Energy\ Exported\ (T5)$$

If the Buyer, utility, or independent system operator require that Real Power Ramp Rates are applied during the Test, the energy discharged during the ramp up and ramp down times shall be included in the Actual Energy Capacity.

3. Guaranteed Roundtrip Efficiency

$$Actual\ Roundtrip\ Efficiency \geq Guaranteed\ Roundtrip\ Efficiency$$

Where:

$$Actual\ Roundtrip\ Efficiency = 100\% * \frac{Battery\ Energy\ Exported\ (T8) - Battery\ Energy\ Exported\ (T5)}{Battery\ Energy\ Imported\ (T4) - Battery\ Energy\ Imported\ (T1)}$$

(f) *Acceptance Criteria*.

If the Acceptance Criteria for Guaranteed Roundtrip Efficiency are not met, then Tesla shall have the option to buy down the Guaranteed Roundtrip Efficiency. The "Roundtrip Efficiency Buydown" shall be calculated as follows

$$Roundtrip\ Efficiency\ Buydown\ [USD] = \sum_{t=1}^{Warranty\ Years} \frac{\left(\frac{1}{Actual\ RTE} - \frac{1}{Guaranteed\ RTE}\right) \times (Total\ Throughput\ Limitation_t - Total\ Throughput\ Limitation_{t-1}) \times Guaranteed\ Energy\ Capacity \times Energy\ Cost}{(1+i)^t}$$

Where,

t = Operating Year of the Megapack Limited Warranty
Energy Cost has the meaning given in the Key Terms
i = discount rate of 10%

Tesla's liability for the Roundtrip Efficiency Buydown will be limited to the Roundtrip Efficiency Buydown Cap

EXHIBIT W

GUARANTY OF PAYMENT AND PERFORMANCE

This Guaranty of Payment and Performance (this "Guaranty") dated as of October 29, 2024 (the "Effective Date"), is entered into by Public Service Company of New Mexico ("Guarantor"), in favor of Gridworks Inc., a corporation organized under the laws of the State of New Mexico ("Beneficiary") (Beneficiary and Guarantor, individually a "Party" and collectively, the "Parties").

RECITALS

A. Guarantor's affiliate, Public Service Company of New Mexico (the "Owner"), and Beneficiary have entered into that Engineering, Procurement and Construction Agreement dated October 29, 2024 (as it may be amended, restated or otherwise modified pursuant to its terms from time to time, the "Agreement"), pursuant to which the Owner has agreed, among other things, to (i) purchase a photovoltaic battery energy storage system to be built by Beneficiary (as defined in the Agreement) and (ii) perform certain related obligations in connection therewith.

B. Guarantor acknowledges that it will indirectly benefit from the terms and conditions of, and the performance by Owner and Beneficiary of their respective obligations under, the Agreement.

NOW, THEREFORE, in consideration of Beneficiary's agreement to enter into the Agreement with Owner, the premises, covenants and agreements contained in this Guaranty and other good and valuable consideration (the receipt and sufficiency of which the Parties acknowledge), Guarantor agrees with Beneficiary as follows:

AGREEMENT

1. Defined Terms. Except as otherwise provided herein, all capitalized terms used herein but not defined herein shall have the respective meaning assigned to such term in the Agreement.

2. Guaranty.

(a) In consideration of, and as an inducement for, Beneficiary's entering into the Agreement as of the date hereof, and in respect of the other consideration described herein, Guarantor, as of the Effective Date, irrevocably and unconditionally guarantees to Beneficiary the full and timely payment when due of all sums due and payable by Owner to Beneficiary in accordance with the terms and conditions of the Agreement, up to the amount of $_____, plus applicable taxes, and the full and faithful performance of all non-monetary obligations and responsibilities of Owner under the Agreement (collectively, the "Guaranteed Obligations").

(b) The Guaranteed Obligations shall include, without limitation, all reasonable costs and expenses (including reasonable attorneys' fees), if any, incurred in enforcing Beneficiary's rights under this Guaranty.

(c) To the extent that Owner shall fail to pay or fulfill any Guaranteed Obligation, as applicable, when due under the Agreement, Guarantor shall promptly pay or fulfill such Guaranteed Obligation, as applicable, for the benefit of Beneficiary, and in any event no later than on or before 5:00 p.m. prevailing Mountain Time on the fifth (5th) business day following a written justified demand therefor (a "Demand") furnished by Beneficiary to Guarantor.

(d) Notwithstanding anything contained herein to the contrary, in the event of any claim under this Guaranty, Guarantor shall be entitled to assert any defense, set-off or counterclaim Owner could assert had such claim been made directly against Owner, except for defenses arising out of bankruptcy, insolvency, receivership, reorganization, dissolution or liquidation of Owner, the power or authority of Owner to enter into the Agreement and the lack of validity or enforceability of the Agreement.

3. Nature of Guaranty. This Guaranty constitutes a guarantee of payment and performance and not of collection. This Guaranty is a continuing guarantee of payment and performance, is binding as a continuing obligation of Guarantor and shall be absolute and unconditional as if Guarantor were the principal obligor in respect of the Guaranteed Obligations.

4. Guaranty Absolute. To the fullest extent permitted by applicable law, the obligations of Guarantor are absolute and unconditional (except in the event of Owner's satisfaction of all its obligations under the terms of the Agreement) and Guarantor shall have no right to be released, relieved or discharged, in whole or in part, from its obligations referred to in this Guaranty for any reason whatsoever, including:

(a) any change in the time, manner or place of the payment or performance of the Guaranteed Obligations or in any other term of the Agreement or Owner's failure to carry out any of its obligations under the Agreement;

(b) any change in the financial condition of Guarantor or Owner;

(c) any change in the corporate existence, structure or ownership of, or cessation of existence of, Guarantor or Owner (whether by way of merger, amalgamation, transfer, sale, lease or otherwise);

(d) the bankruptcy, winding-up, liquidation, dissolution, insolvency, reorganization or other similar proceeding affecting Owner or its assets or any resulting rejection, release, stay or discharge of any Guaranteed Obligations;

(e) any lack or limitation of power, incapacity or disability on the part of Owner or of its directors, officers or agents;

(f) any amendment, supplement or modification to, waiver of, consent to or departure from, or failure to exercise any right, remedy, power or privilege under or in respect of, the Agreement, the Guaranteed Obligations or any other agreement or instrument relating thereto;

(g) the existence of any claim, set-off, or other rights which Guarantor may have at any time against Beneficiary in connection with any matter unrelated to the Agreement; or

(h) any defense arising by reason of any failure of Beneficiary to make any presentment, demand for performance, notice of non-performance, protest, or any other notice, except as expressly set forth herein.

5. Demands. Each Demand shall be in writing and shall (i) specify the nature of Owner's default in payment or performance of the Guaranteed Obligation that Owner has failed to pay or perform and (ii) demand that Guarantor pay or perform, as applicable, such Guaranteed Obligation in accordance with this Guaranty. A Demand satisfying the foregoing requirements shall be required with respect to Guaranteed Obligations before Guarantor is required to pay or perform such Guaranteed Obligation and shall be deemed sufficient notice to Guarantor that it must pay or perform the Guaranteed Obligation to the extent required hereunder.

6. No Exhaustion of Remedies. Subject to the requirement that Beneficiary provide a Demand in accordance with Section 2(c), Beneficiary is not obligated to exhaust its remedies against Owner or any other persons or take any other action before being entitled to make a demand for payment or performance from Guarantor.

7. Representations and Warranties. Guarantor represents and warrants to Beneficiary that, as of the Effective Date:

(a) Guarantor has full power and authority to execute, deliver and perform its obligations under this Guaranty;

(b) The execution, delivery and performance of this Guaranty have been duly authorized by all necessary action on behalf of Guarantor and do not contravene any provision of applicable law or of Guarantor's organizational documents or any contractual restriction binding on Guarantor or its assets;

(c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other laws of general application relating to or affecting creditors' rights and to general equitable principles (whether considered in a proceeding at law or in equity);

(d) No consent, approval, authorization or permit of, or filing with or notification to, any person or entity is required for or in connection with the execution and delivery of this Guaranty by Guarantor or for or in connection with the consummation of the transactions and performance of the terms and conditions contemplated hereby by Guarantor; and

(e) Guarantor has full knowledge of the financial condition of Owner.

8. Financial Condition of Owner. Guarantor shall be responsible for maintaining its knowledge of Owner's financial condition during the term of this Guaranty. Beneficiary shall have no duty to advise Guarantor of information known to Beneficiary regarding such financial condition or any circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations by Owner.

9. Termination. This Guaranty shall automatically terminate upon the expiration of all surviving obligations of Owner under the Agreement (the "Guaranty Termination Date"). Any Demand submitted by Beneficiary after the Guaranty Termination Date shall not be effective or create any liability of Guarantor and is not guaranteed under this Guaranty. No such termination or release shall affect, release or discharge Guarantor's liability with respect to any Demand claimed by Beneficiary submitted by Beneficiary prior to the Guaranty Termination Date, and this Guaranty shall remain in full force and effect until such Demand submitted prior to the Guaranty Termination Date is paid in full, fulfilled or Guarantor is otherwise discharged from liability.

10. Subrogation. Guarantor will not exercise any rights that it may acquire by way of subrogation under this Guaranty by any payment made hereunder or otherwise, until all the Guaranteed Obligations have been paid in full, performed or otherwise satisfied. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all the Guaranteed Obligations shall not have been paid in full, performed or otherwise satisfied, such amount shall be held in trust by Guarantor for the benefit of Beneficiary and shall forthwith be paid to Beneficiary, to be credited and applied to the Guaranteed Obligations.

11. Waivers. Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment, demand, notice of non-performance, protest, notice of protest and notice of dishonor concerning the liabilities of Guarantor, except for a Demand as expressly set forth in Section 2(c) above; and (c) any right to require that any action or proceeding be brought against Owner or any other person to require that Beneficiary seek enforcement of any performance against Owner or any other person. Guarantor consents to the renewal, compromise, extension, changes in the time of payment of or other changes in the terms of the Guaranteed Obligations, or any part thereof or any changes or modifications to the terms of the Agreement.

12. Benefit of the Guaranty. This Guaranty shall be binding on the executors, administrators and successors of Guarantor and shall inure to the benefit of Beneficiary and its executors, administrators, successors and permitted assigns.

13. Entire Agreement. Notwithstanding anything else stated in this Guaranty, this Guaranty constitutes the entire agreement between Beneficiary and Guarantor with respect to the Guaranty's subject matter and supersedes all other agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between the Parties, with respect to the subject matter of this Guaranty, other than as expressly stated in this Guaranty.

14. Remedies. No delay of Beneficiary in the exercise of, or failure to exercise, any rights or remedies hereunder shall operate as a waiver of such rights or remedies, a waiver of any other rights or remedies or a release of Guarantor from any obligations hereunder, and no single or partial exercise by Beneficiary of any right or remedy shall preclude any further exercise thereof or the exercise of any other right or remedy. The remedies in this Guaranty are cumulative and not exclusive of any remedies provided by law or equity.

15. Severability. If any provision of this Guaranty is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall apply only to such provision and all other provisions of this Guaranty shall continue in full force and effect.

16. Amendment. This Guaranty shall not be amended, changed or modified except by a subsequent agreement in writing which indicates that such writing is intended to amend the terms of this Guaranty and is signed by duly authorized officers of both Parties. The Parties agree that this Guaranty shall not be amended in any manner by any course of dealing between the Parties.

17. Notices. Any notice, demand, request or other communication to be given in connection with this Guaranty must be addressed to the receiving Party at:

To Beneficiary:

Gridworks Inc.
3900 Singer Blvd. NE
Albuquerque, NM 87109
Attention: Legal
Telephone: +1 505.944.4220
Email: legal@affordable-solar.com

And to Guarantor at:

Public Service Company of New Mexico
414 Silver Avenue SW
Albuquerque, NM 87102
Attention: General Counsel

Any notice, Demand, request or other communication may be delivered, and shall be effective upon delivery by certified mail. Each Party may notify the other of any change of address in the manner provided therein.

18. Assignment. Guarantor may not assign its rights under this Guaranty without the prior written consent of Beneficiary. For avoidance of doubt, Beneficiary shall be permitted to freely assign its rights and obligations under this Agreement in connection with a valid assignment by Beneficiary of the Agreement. Any purported assignment which fails to comply with the requirements of this Section 18 shall be null and void and shall have no force or effect.

19. Governing Law. This Guaranty and the rights and obligations of the Parties hereunder and the transactions contemplated hereby shall be governed by, enforced and interpreted in accordance with the laws of the State of New Mexico, without regard to conflicts of laws rules that require or permit the application of the laws of another jurisdiction.

IN WITNESS WHEREOF, the Parties have caused this Guaranty to be executed by their authorized representatives as of the Effective Date.

GUARANTOR:
Public Service Company of New Mexico

By:_____
Name:_____
Title: _____

BENEFICIARY:
Gridworks Inc.

By:_____
Name:_____
Title: _____

EXHIBIT X

EXPEDITED PAYMENT

Contractor shall specify and arrange for the purchase of:

1. PV Modules sufficient to meet the requirements in Section 2.2 of Exhibit A-1, Contractor's Statement of Work from approved suppliers described in Exhibit K, Specified Suppliers and Specified Subcontractors; and

2. ESS Units sufficient to meet the requirements in Section 2.15 of Exhibit A-1, Contractor's Statement of Work from approved suppliers described in Exhibit K, Specified Suppliers and Specified Subcontractors.

Contractor shall provide to Owner copies of supply agreements with such suppliers (currently anticipated to be Boviet for the PV Modules and Tesla for the ESS Units) and will provide a schedule of payment to such suppliers as design is finalized. Owner agrees that within 10 days of Contractor's submission of invoices for PV Modules or ESS Units to Owner and consistent with the above, Owner shall pay such invoices (without duplication in the Contract Price).

Appendix X-1 Project Module Supply Agreement by and between Boviet Solar USA, LTD. and Gridworks, Inc.

Appendix X-2 BESS Sale & Purchase Agreement by and between Tesla, Inc. and Gridworks, Inc.

EXHIBIT Y

LIMITED NOTICE TO PROCEED AGREEMENT

LIMITED NOTICE TO PROCEED AGREEMENT

This LIMITED NOTICE TO PROCEED for the **Sunbelt Solar Energy Center** ("LNTP") is issued as of **XXXX XX, 202X** (the "Effective Date"), by PUBLIC SERVICE COMPANY OF NEW MEXICO ("Owner"), to GRIDWORKS INC. ("Contractor") pursuant to the EPC of the same date.

This LNTP authorizes Contractor to:

Execute the Tesla Megapack Sale and Purchase Agreement. (See Exhibit X in EPC Agreement)

Procure and purchase the photovoltaic modules (See Exhibit X in EPC Agreement)

Procure and initiate purchases of other long lead items:

- Solar tracker materials
- Solar PCS stations
- BESS medium-voltage transformers
- Various HV components per HV subcontractor:
    - Cap bank materials (if applicable)
    - Steel structures
    - Circuit breakers
    - Station service transformer
    - Control building
    - Misc. gen-tie materials

Prepare and submit up to 90% project engineering packages for Owner reviews

LNTP Amount. The amount authorized by this LNTP shall not exceed $_____M. The payment schedule will follow the payments in Exhibit I of the EPC Agreement (the "Payment Schedule"). Supply agreements obtained under this LNTP will be shared with Owner as soon as executed and will be assignable to Owner or its designee. No additional expenditures are authorized until Owner issues full Notice to Proceed.

Payment. Contractor shall invoice Owner the portions of the LNTP Amount specified in the payment schedule set forth in Exhibit I upon providing Owner evidence of satisfactory progress of the preliminary work. Payment terms will follow Section 6 of the EPC.

EPC Contract Wrap. This LNTP – including any payments made – shall be incorporated into the EPC Contract and the rights and obligations of the Parties under this LNTP (including the Parties' rights upon Termination of obligations hereunder) shall be governed by the terms of the EPC Contract. In the event of a conflict between this LNTP and the EPC Agreement, all of both Parties' rights, obligations and remedies under this LNTP will be superseded by the rights, obligations and remedies of the EPC Contract.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this LNTP to be duly executed as of the Effective Date.

OWNER:

Public Service Company of New Mexico

By: _____

Name: _____

Title: _____

CONTRACTOR:

Gridworks Inc.

By: _____

Name: _____

Title: _____

EXHIBIT Z - Tesla Lithium Indexation Formula, Assumptions and Illustrations (Price Adjustment)

The Contract Price shall be adjusted to the extent the Final Price for the Tesla ESS (Megapack) units changes pursuant to the following:

Final Price = Megapack System Price + Price Adjustment

Price adjustment is based on $/kWh of installed energy capacity

Price Adjustment = (LCEm - LCEb) * MPx * (1/Fx) / 1000

- Fx - RMB/USD rate at the time of Final Price Calculation
- MPx - Megapack cost factor
- LCEb - baseline lithium carbonate price
- LCEm - market lithium carbonate price = the average lithium carbonate price of the LCE Observation Period in accordance with the table below.

Defined by SMM Shanghai Metals Market (99.5% Battery Grade)

- Minimum value of 75,000 RMB

Delivery Period Midpoint*	LCE Observation Period**
Dec — Feb	Mar — May
Mar — May	Jun — Aug
Jun — Aug	Sep — Nov
Sep — Nov	Dec — Feb

Details on Delivery and associated LCE Observation Quarter subject to final confirmation
*Median date between Earliest Permitted Delivery Date and Guaranteed Delivery Date
**Year prior to median delivery date
Example: For median delivery date in November 2024, the LCE Observation Period for Continental North America would be Dec 2023 - Feb 2024

Tesla's LCE Indexation Illustration

Project/Configuration	Sunbelt 30 MW
Installed Capacity (kWh)	141,004.8
Exchange (RMB/USD)***	7.244
LCEb (RMB/mt)	100,000
MPx	0.844

% Change in LCE	LCEm (RMB/t)	($/kWh)
-25%	75,000	-2.91
50%	150,000	5.82
150%	250,000	17.47
250%	350,000	29.12
350%	450,000	40.77

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF PURCHASED POWER AGREEMENT, ENERGY STORAGE AGREEMENTS, AND CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SYSTEM RESOURCES IN 2028	)	**Case No. 24-00271-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Applicant	)	

AFFIDAVIT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

GARY B. BARNARD, Executive Director, PNM Generation Contract and Development, PNMR Services Company, upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Gary B. Barnard** and it is true and accurate based on my own personal knowledge and belief.

Dated this 22nd day of November, 2024.

/s/_Gary B. Barnard
GARY B. BARNARD