BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S APPLICATION FOR APPROVAL OF PURCHASED POWER AGREEMENTS, ENERGY STORAGE AGREEMENTS, AND CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR 2029-2032 SYSTEM RESOURCES AND THE ABANDONMENT OF THE FOUR CORNERS POWER PLANT	)	**Docket No. 26-0000___**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Applicant.	)	

DIRECT TESTIMONY

OF

GARY B. BARNARD

May 29, 2026

NMPRC DOCKET NO. 26-0000___
INDEX TO THE DIRECT TESTIMONY OF GARY B. BARNARD

WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO

I. INTRODUCTION AND PURPOSE 1

II. REQUESTED APPROVALS FOR 2029-2032 RECOMMENDED RESOURCES 2

III. REQUESTED APPROVAL FOR 2029 CCN RESOURCE 12

IV. CONCLUSION 19

PNM Exhibit GBB-1	Education and Professional Summary
PNM Exhibit GBB-2	Palomas Wind Power Purchase Agreement
PNM Exhibit GBB-3	Palomas Wind Special Services Contract Power Purchase Agreement
PNM Exhibit GBB-4	Cat Hills Energy Solar Facility Power Purchase Agreement
PNM Exhibit GBB-5	Cat Hills Energy LLC Energy Storage Agreement
PNM Exhibit GBB-6	Wildcat Solar Facility Power Purchase Agreement
PNM Exhibit GBB-7	Wildcat Solar Power Plant LLC Energy Storage Agreement
PNM Exhibit GBB-8	Gila Monster Energy Storage LLC Energy Storage Agreement
PNM Exhibit GBB-9	TAG II Storage LLC Energy Storage Agreement
PNM Exhibit GBB-10	Encino Storage LLC Energy Storage Agreement
PNM Exhibit GBB-11	Britton Storage LLC Energy Storage Agreement
PNM Exhibit GBB-12	Gridworks Inc. Build-Transfer Agreement

AFFIDAVIT

DIRECT TESTIMONY
OF GARY B. BARNARD
NMPRC DOCKET NO. 26-0000___

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 previously testified before the Commission in Case Nos. 17-00129-UT, 18-00009-UT, 18-00158-UT, 24-00207-UT, 24-000271-UT, and I've provided written testimony in Case Nos. 25-00048-UT and 25-00055-UT.

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

A. I describe and support the Power Purchase Agreement ("PPA") and the Energy Storage Agreement ("ESA") contracts associated with a portfolio of resources that PNM is proposing for availability in 2029 and 2031 to help meet current minimum planning requirements for system reliability to serve customers. The proposed resources that comprise the portfolio are shown below in PNM Table GBB-1.

Additionally, my testimony addresses: 1) the contracting strategy and terms of the PPAs and ESAs; 2) the Request for Proposals process; and 3) the estimated capital costs and timing of the resource projects. My testimony also addresses how the La Luz II Gas Plant Self-Build Project ("La Luz II Project") meets the statutory criteria for approval of a Certificate of Public Convenience and Necessity ("CCN") pursuant to NMSA 1978, Section 62-9-1(A) of the Public Utility Act ("PUA").

PNM Table GBB-1 – Proposed Resource Portfolio

Project Name	Ownership	Resource Type	Nameplate Capacity (MWs)	County	Price*	Interconnection location	Expected Commercial Operation Date (ECOD)
Palomas	PPA	Wind	400	San Miguel, Torrance	$ 64.55	Western Spirit Switchyard	9/30/2029
Palomas (SSC)	PPA	Wind	400	San Miguel, Torrance	$ 64.55	Western Spirit Switchyard	9/30/2029
Cat Hills	PPA	Solar	150	Valencia	$ 39.50	Hidden Mountain 115kV	8/4/2030
Cat Hills	ESA	Battery (4HR)	150	Valencia	$ 16.05	Hidden Mountain 115kV	8/4/2030
Wildcat	PPA	Solar	90	McKinley	$ 39.90	Yah-Ta-Hey 115kV	4/30/2029
Wildcat	ESA	Battery (4HR)	50	McKinley	$ 17.26	Yah-Ta-Hey 115kV	4/30/2029
Gila Monster	ESA	Battery (4HR)	150	Sandoval	$ 14.75	Rio Puerco 115kV	8/1/2030
TAG II	ESA	Battery (8HR)	90	Sandoval	$ 25.65	Rio Puerco 115kV	8/4/2028
Britton (SSC)	ESA	Battery (8HR)	60	Torrance	$ 25.83	Britton 115kV	8/4/2028
Encino	ESA	Battery (8HR)	110	Sandoval	$ 25.20	Rio Puerco 115kV	8/4/2028
La Luz II	BT	Natural gas	40	Valencia	$81.8M	Belen Station	12/1/2030
*Battery based on availability. Wind and Solar per MWhr							
** Special Services Customer will pay for these resources							

II. REQUESTED APPROVALS FOR 2029-2032 RECOMMENDED RESOURCES

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

A. A list of the contracts and a brief description of each are as follows:

Palomas Wind PPAs-The Palomas wind PPAs are between PNM, as buyer, and Pattern Energy, as seller, for approximately 800 MW of total wind generation.

Copies of the contracts are attached as PNM Exhibit GBB-2 and PNM Exhibit GBB-3. The two contracts are for 400 MW each and include near identical terms for this resource. One of the contracts identifies that 400 MW of the resource is to serve PNM's Special Service Contract ("SSC") customer's resource needs. Contracts were executed on May 28, 2026.

Cat Hills PPA and ESA-The Cat Hills ESA and solar PPA are between PNM, as buyer, and Exus, as seller, for 150 MW of solar energy and 150 MW of 4-hour battery storage. Copies of the Cat Hills PPA and ESA contracts are attached as PNM Exhibit GBB-4 and PNM Exhibit GBB-5, respectively. Contracts were executed on May 5, 2026.

Wildcat PPA and ESA-The Wildcat ESA and solar PPA are between PNM, as buyer, and Solariant, as seller, for 90 MW of solar energy and 50 MW of 4-hour battery storage. Copies of the Wildcat PPA and ESA contracts are attached as PNM Exhibit GBB-6 and PNM Exhibit GBB-7, respectively. Contracts were executed on May 5, 2026.

Gila Monster ESA-The Gila Monster ESA is between PNM, as buyer, and EsVolta, as seller, for 150 MW of 4-hour battery storage. A copy of the Gila Monster ESA contract is attached as PNM Exhibit GBB-8. Contract was executed on May 5, 2026.

TAG II ESA-The TAG ESA is between PNM, as buyer, and Exus, as seller, for 90 MW of 8-hour battery storage. A copy of the TAG ESA contract is attached as PNM Exhibit GBB-9. Contract was executed on May 5, 2026.

Encino ESA-The Encino ESA is between PNM, as buyer, and Exus, as seller, for 110 MW of 8-hour battery storage. A copy of the Encino ESA contract is attached as PNM Exhibit GBB-10. Contract was executed on May 5, 2026.

Britton ESA-The Britton ESA is between PNM, as buyer, and Exus, as seller, for 60 MW of 8-hour battery storage. A copy of the Britton ESA contract is attached as PNM Exhibit GBB-11. Contract was executed on May 5, 2026.

Gridworks Contract-The La Luz II Project is a PNM utility project for approximately 40 MW of gas generation to be built next to the existing La Luz Energy Center. Gridworks is responsible for the construction. A copy of the Build-Transfer ("BT") contract between PNM and Gridworks is attached as PNM Exhibit GBB-12. Contract was executed on May 5, 2026.

Q. Have there been any changes in the ability to acquire the resources being requested in this Application since completing the analysis?

A. Yes, in negotiating the contract for the Palomas wind PPA, it has been determined that the guaranteed start date needs to be moved to fall of 2029 and the price has changed to $64.55. PNM's modeling group reviewed these changes and determined

that it was still in the best interest of customers to allow for these updates. The IM reviewed this modeling and concurred and agreed to support these process adjustments given the significant financial benefit to customers over all the other alternatives. (Refer to PNM witness Duane's testimony on model benefit). With these changes the resource would not be available to serve load before the summer 2029. PNM is reviewing options for whether all load obligations prior to fall of 2029 can be accommodated, especially whether PNM would accommodate load under the Senate Bill 170 provisions. A full determination for 2029 summer capacity needs and recommendations will be determined through the RFP supplemental evaluation.

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

A. Yes. PNM has current PPAs and ESAs with Exus and construction contracts with Gridworks. PNM has previously worked with Pattern Energy on transmission projects.

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

A. Yes, the developers proposing renewable projects have tax-related deadlines that are critical to their projects. Also, each of these projects have approval date provisions written into their associated contracts to ensure they meet the installation dates. In order to get the full benefit of expiring tax related incentives for renewable

energy, the developers desire the earliest possible approval, but no later than the six month regulatory deadline for PPAs and ESAs.

Q. Please describe the terms of the PPAs and ESAs in response to the specific requirements of 17.9.551 NMAC ("Rule 551").

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

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

A. There are no options to extend any of the PPAs or ESAs beyond the initial terms of the contracts, which are 20 years.

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

A. A summary description of each of the proposed facilities is included in PNM Table GBB-1 and discussed above.

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 contracts? (17.9.551.8(D)(2)(B) NMAC)

A. The Palomas wind project is designed to provide energy of approximately 2,900,000 MWh per year. The Cat Hills solar project is designed to provide energy of approximately 433,000 MWh per year. The Wildcat solar project is designed to produce approximately 260,000 MWh per year. The battery storage facilities are expected to be available for 95% of the time and will be able to be charged and discharged up to 365 cycles per year with each cycle able to deliver rated capacity for a period of either 4 or 8 hours as needed.

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

A. Please see PNM Table GBB-1 above. Charges will begin at Commercial Operation Date ("COD"). There are no price escalators or price re-openers contemplated in the contract. However, there are cancellation provisions associated with government actions or force majeure. Before cancellation, the parties will have the ability to discuss the appropriate next steps-site section of the contract.

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 PPAs and ESAs do not require PNM to pay any administrative costs, transactional, or direct operation and maintenance costs. For the ESAs, PNM pays the sellers based on battery availability, and for the PPAs on energy production.

Q. Please describe the provisions for each ESA relating to nonperformance. (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 the ESAs in section 12.1 relating to Event of Default. 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 relevant ESA and receive a termination payment. Such damages would include the cost of replacement energy and/or capacity the project failed to deliver under the terms of the agreement. Section 12.1 also defines Events of Default related to non-performance of the facility. Performance-related Events of Default include: failure to achieve the COD on or prior to the Guaranteed Start Date, where the project developer is liable for liquidated damages for non-performance. Section 3.7 of the ESA provides that, if the COD has not occurred by the ECOD as such date may be extended pursuant to terms of the agreement, the project developer will pay PNM liquidated damages on a dollar per day for each MW of capacity that is delayed. The project developer

must pay liquidated damages if it has not cured all delayed capacity to achieve Commercial Operation by the Guaranteed Start Date.

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

A. The default provisions addressed in the PPAs, including the cure period for each type of default and the remedies, are the same between the agreements. For a default during the twenty-year term: The project developer is liable for liquidated damages for non-performance. Section 3.7 of the PPAs provides that, if the COD has not occurred by the ECOD 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.

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

A. Yes. The wind, solar, and battery storage projects will require the approvals listed in Exhibit E of the contracts. These permits will be identified and procured by the developer or the contractor for the project

Q. Do the PPAs 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 options in the contracts.

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

A. The projects will interconnect to the locations described in the table above.

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

A. The PPAs and ESAs provide additional services including, frequency response, load following, contingency reserve, spinning reserve, generation, and storage. In addition to the system benefits provided under the agreements, Article 19 requires the developers to post security, which increases the monetary incentive to meet its capacity and schedule requirements. The developers are required to post development security equal to $100,000 per MW multiplied by the guaranteed capacity in MW. Additionally, no later than the COD, the developers will be

required to post and maintain security equal to $125,000 per MW multiplied by the guaranteed capacity in MW.

Q. Do the PPAs and ESAs include a requirement for reporting on apprenticeship requirements?

A. Yes. The agreements include requirements for the project developer to provide reporting and confirmation of meeting the apprenticeship requirements identified both at the federal and state levels. PNM will report those requirements to the Commission accordingly. Refer to Section 10.1A and 10.1B of PNM Exhibits GBB-2 through GBB-11.

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 PPA and ESA projects.

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

A. Yes. The terms and conditions in the PPAs and ESAs are typical of what is included in similar contracts and are commercially reasonable in the utility industry.

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

A. Yes, as detailed above.

III. REQUESTED APPROVAL FOR 2029 CCN RESOURCE

Q. What CCN approval is PNM requesting in this case?

A. PNM is seeking a CCN for the La Luz II Project.

Q. Please describe the La Luz II Project.

A. The La Luz II Project will provide approximately 40 MW of natural gas capacity and energy to PNM's system. The project will be located next to the existing La Luz Energy Center natural gas plant in Belen, New Mexico.

Q. What contracting structure is PNM using for the La Luz II Project?

A. PNM has signed a contract with Gridworks to construct the La Luz II Project. Please see the Gridworks contract attached as PNM Exhibit GBB-12. This contract structure has been used as the model for PNM over the last several utility-owned

resource projects. It is the same structure used for the Sunbelt Solar and Storage project approved by the Commission in Case No. 24-00271-UT. The La Luz II Project is an agreement with a defined payment and construction schedule. This contract with Gridworks is a turnkey agreement. As explained later 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 describe the timeline for the La Luz II Project.

A. The La Luz II Project is scheduled to be ready for commercial operation on January 1, 2031 and will be depreciated by the end of 2044.

Q. Please provide the total estimated cost of construction for the La Luz II Project.

A. The total estimated capital cost for the La Luz II Project, including engineering, materials, construction, loads, and tax (including Gross Receipts Tax), is approximately $101 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 for the La Luz II 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 below provides a summary itemization for the RFP-estimated cost of the La Luz II Project. Refer to PNM witness Hakimian for the Transmission & Interconnection charge reflected below.

PNM Table GBB-2 – La Luz II Project Costs

La Luz II		
EPC	$	81,769,671
Development, Engineering, time, Owners cost	$	3,570,000
PNM metering, interconne	$	530,450
PNM transmission issues	$	500,000
Gross Receipts Tax	$	5,722,021
AFUDC	$	8,855,157
Total	$	100,947,299

Q. How did PNM develop the costs for the La Luz II Gas Plant Project?

A. The construction costs for the La Luz II project are based on the contract costs developed and proposed by Gridworks. The applicable New Mexico Gross Receipts Tax for the Project was included within the contract price (broken out separately on the table). The additional costs reflect owner's costs and interconnections costs.

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

A. The expected fixed annual operating and maintenance (O&M) cost for the first year will be approximately $1.7M with the variable annual O&M expense is estimated to be approximately $450,000 per year on average.

Q. What is PNM's estimate for the annual capital additions for the La Luz II Project?

A. PNM does not expect any significant capital expenditures in the first five years of operation. Additional future capital expenditures will be based on run time, starts, and other demands on the unit.

Q. Does the cost estimate in PNM Table GBB-2 account for any available tax credits?

A. No, no tax credits are available for this project at present.

Q. Please describe the terms of the Gridworks Contract.

A. The La Luz II Project has an agreement with a defined payment and construction schedule. This contract with Gridworks is a turnkey agreement. As explained later 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 included in the Gridworks Contract.

A. The contract includes several provisions to help protect PNM customers. For instance, a performance bond that equals 100% of contract price, a warranty bond upon completion, delay damages and 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**.**

Q. What happens in the event of a default under the contract by Gridworks?

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) Insolvency of the contractor (2) unauthorized assignment of the agreement (3) bankruptcy; (4) Failure to achieve Substantial completion per the agreement. More details are provided in the contract in Section 19.1.

Q. When will the La Luz II Project be operational?

A. The La Luz II Project is scheduled to become commercially operational and begin serving customers no later than January 1, 2031. In order to meet this in service date, PNM requests approval of the Gridworks contract within six months consistent with the regulatory deadlines applicable with respect to the PPAs and ESAs.

Q. Does the Gridworks contract include a requirement for reporting on apprenticeship requirements?

A. Yes. The contract includes requirements for the project developer to provide reporting and confirmation of meeting the apprenticeship requirements identified both at the federal and state levels. PNM will report those requirements accordingly. Refer to Sections 9.1, 10.4 and 10.5 of PNM Exhibits GBB-12.

Q. Will the La Luz II Project help to reduce costs to PNM's customers by utilizing an existing location and transmission and distribution infrastructure?

A Yes. The La Luz II Project will be located at PNM's existing La Luz Energy Center and can be installed in a relatively short time frame. The existing infrastructure is established; there is a Large Generator Interconnection Agreement ("LGIA") already in place; only limited substation expansion work will be required; and the project will increase system reliability and resiliency for customers. The La Luz II Project will provide generation grid benefits through providing firm capacity and additional resiliency to the system, especially when renewable resources are not available.

Q. Is the La Luz II Project the most cost effective among feasible alternatives?

A. Yes. The La Luz II Project is supported as part of the requested portfolio as discussed by PNM witnesses Williams and Duane. As discussed in more detail by PNM witness Willaims, there are benefits to having a mix of utility-owned and contracted resources as part of PNM's resource portfolio. In addition, the La Luz II

Project is the product of competitive bid processes and will utilize existing PNM infrastructure to minimize costs. PNM's direct management of the agreement to control procurement risk markups and return expectations also provide cost benefit. Together, these factors make the La Luz II Project the most cost effective among feasible alternatives.

Q. Does the La Luz II Project provide overall net public benefits?

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

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

2) The La Luz II Project mitigates operational issues caused by high renewable generation on PNM's system by providing firm capacity and grid support. PNM customers will benefit from the additional capacity and load following capabilities; and

3) As a dispatchable resource, the La Luz II 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.

4) Additionally, the La Luz II project will provide new tax base and tax revenue for Valencia accounting and approximately 75-100 jobs during construction.

IV. CONCLUSION

Q. Please summarize your testimony.

A. PNM's contracts for the proposed resource portfolio in this proceeding are reasonable and reflect current market conditions and utility industry standards. These contracts leverage wind, solar, battery, and natural gas using proven technology, locations, and assets, and result in a cost-effective portfolio of resources needed to safely and reliably serve customers. The bid evaluation 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. In addition, the Commission should approve PNM's request for the issuance of a CCN to construct, own, and operate the La Luz II Project.

Q. Does this conclude your testimony?

A. Yes.

GCG#535324

Education and Professional Summary of Gary B. Barnard

PNM Exhibit GBB-1

Is contained in the following 3 pages.

GARY B. BARNARD
2401 Aztec Road NE
Albuquerque, NM 87107
(505) 241-2854
email: gbarnar@pnm.com

ACCOMPLISHMENTS

- Developed, managed, sourced, and installed approximately 500MW of utility scale solar projects totaling approximately $950M on schedule and budget.
- Manage the operations and maintenance of 26 solar plants located across the State of NM.
- Responsible for all aspects of the construction of a 40MW gas plant for $60M near Belen NM.
- Direct the contract process for renewable contracts, construction contracts, and maintenance contracts for generation development including the bidding process for 2000MWs of solar battery and wind.
- Developed and implemented Supply Chain planning, infrastructure, metrics, policies, and processes.
- Directed the development and implementation of enterprise wide benchmarks, metrics, and system infrastructure.
- Sourced, identified and captured $3 million in savings from fleet and corporate indirects off a spend amount of $13 million

WORK EXPERIENCE

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

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

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

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

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

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

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

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

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

EDUCATION

MBA, EMORY UNIVERSITY, Atlanta, GA 1988

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

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

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

CERTIFICATIONS/SKILLS

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

Palomas Wind Power Purchase Agreement

PNM Exhibit GBB-2

Is contained in the following 155 pages.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Execution Version

POWER PURCHASE AGREEMENT

PALOMAS WIND FACILITY

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

PALOMAS POWER LLC

Dated as of May 28th, 2026

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

POWER PURCHASE AGREEMENT—PALOMAS WIND FACILITY 1
ARTICLE 1 Definitions and Rules of Interpretation 1
1.1 Definitions 1
1.2 Rules of Construction. 20
1.3 Interpretation with Interconnection Agreement 21
1.4 Interpretation of Arrangements for Electric Supply to the Project 21
ARTICLE 2 Term and Termination 22
2.1 Execution Date and Term 22
ARTICLE 3 Project Description 22
3.1 Commercial Terms 23
3.2 Project 23
3.3 Location 24
3.4 General Design of the Project 24
3.5 Expected Commercial Operation Date 25
3.6 Extension of Expected Commercial Operation Date 25
3.7 Delay Damages 26
3.8 Capacity Shortfall Damages. 26
3.9 Test Energy 26
3.10 Notice of Commercial Operation 27
3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. 27
3.12 Eligible Change in Tariff. 28
ARTICLE 4 AGC; Curtailment 28
4.1 AGC; Curtailment. 28
ARTICLE 5 Delivery and Metering 29
5.1 Delivery Arrangements. 29
5.2 Availability Reporting 29
5.3 Electric Metering Devices. 30
5.4 Adjustment for Inaccurate Meters 31
ARTICLE 6 Conditions Precedent 32
6.1 Conditions Precedent 32
6.2 Notice 32
ARTICLE 7 Sale and Purchase of Energy Output 32
7.1 Sale and Purchase of Energy Output 32
7.2 Title and Risk of Loss 32

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

7.3 Future Environmental Attributes 32
7.4 Scheduling. 33
7.5 Seller Forced Outages 33
7.6 Availability Guarantee 34
ARTICLE 8 Payment Calculations 34
8.1 Billing Components 34
8.2 Payment Support Requirement 34
8.3 Survival on Termination 34
ARTICLE 9 Billing and Payment Procedures 34
9.1 Statements and Payment of Electricity Payments. 34
9.2 Miscellaneous Payments 35
9.3 Currency and Method of Payment 35
9.4 Default Interest 35
9.5 Disputed Items. 36
9.6 Statement Errors 36
9.7 Taxes. 36
9.8 Setoff and Payment Adjustments 37
9.9 Netting. 37
9.10 Survival on Termination 38
ARTICLE 10 Operations and Maintenance 38
10.1 Construction of the Project. 38
10.2 Commissioning and Testing. 39
10.3 Access to and Inspection of the Project. 40
10.4 Operating Parameters. 40
10.5 Operating Procedures 41
10.6 Project Maintenance. 41
10.7 Sales to Third Parties 42
10.8 [Reserved] 42
10.9 [Reserved] 42
10.10 [Reserved]. 42
10.11 Weather Stations. 42
10.12 Monthly Operational Report. 43
10.13 [Reserved]. 43

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

ARTICLE 11 Environmental Attributes....43
11.1 Sale of RECs and Environmental Attributes. 43
ARTICLE 12 Default and Remedies 45
12.1 Events of Default of Seller. 45
12.2 Events of Default of Buyer. 48
12.3 Damages Prior to Termination. 49
12.4 Termination. 49
12.5 Specific Performance 50
12.6 Remedies Cumulative 50
12.7 Waiver and Exclusion of Other Damages 50
12.8 Payment of Amounts Due to Buyer 50
12.9 Duty to Mitigate 51
12.10 Security Rights 51
ARTICLE 13 Contract Administration and Notices 51
13.1 Notices in Writing 51
13.2 Representative for Notices 51
13.3 Authority of Representatives 51
13.4 Records 51
13.5 Provision of Real-Time Data. 53
13.6 Examination of Records. 53
13.7 Exhibits. 53
13.8 Resolution of Issues 53
ARTICLE 14 Force Majeure 54
14.1 Definition. 54
14.2 Notification Obligations 55
14.3 Duty to Mitigate 55
14.4 Force Majeure Event Occurring After Commercial Operation 56
ARTICLE 15 Representations, Warranties and Covenants 56
15.1 Seller's Representations, Warranties and Covenants 56
15.2 Buyer's Representations, Warranties and Covenants 58
ARTICLE 16 Insurance 59
16.1 Evidence of Insurance. 59
16.2 Term and Modification of Insurance. 59
16.3 Endorsements and Other Requirements. 60

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

ARTICLE 17 Legal and Regulatory Compliance and Governmental Approval.....60
17.1 Applicable Laws 60
17.2 Governmental Approvals 60
17.3 NMPRC Approval 60
17.4 Compliance with Reliability Standards 62
17.5 Compliance Information 62
ARTICLE 18 Assignment and Other Transfer Restrictions.....62
18.1 No Assignment Without Consent 62
18.2 Conditions on Transfers 63
18.3 Change of Control.....63
18.4 Transfer Without Consent Is Null and Void 63
18.5 Subcontracting 63
18.6 Assignment to Lenders.....63
ARTICLE 19 Credit and Security Requirements 64
19.1 Security 64
19.2 Form of Security 64
19.3 Grant of Security Interest.....65
19.4 Use of Security.....65
ARTICLE 20 Indemnity; Insurance Proceeds 65
20.1 Indemnification.....65
20.2 Notice of Claims; Procedure.....66
20.3 Insurance Proceeds.....67
ARTICLE 21 Governmental Charges.....67
21.1 Allocation of Governmental Charges. 67
ARTICLE 22 Miscellaneous.....67
22.1 Waiver.....67
22.2 Fines and Penalties.....68
22.3 Standard of Review.....68
22.4 Disclaimer of Certain Third Party Beneficiary Rights. 68
22.5 Relationship of the Parties.....68
22.6 Equal Employment Opportunity Compliance Certification 68
22.7 Survival of Obligations 69
22.8 Severability 69
22.9 Complete Agreement; Amendments.....69

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

22.10 Binding Effect 69
22.11 Headings 69
22.12 Counterparts 69
22.13 Governing Law 69
22.14 Confidentiality. 70
22.15 Marketing Rights; Press Releases and Media Contact; Access. 72
22.16 Right to Mortgage 72
22.17 Forward Contract and Master Netting Agreement 73
22.18 Accounting Matters 73
22.19 Telephone Recording 74
22.20 Anti-Corruption 75
22.21 Trade Controls. 75
22.22 Market Event 77

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBITS

Exhibit A	Description of Seller's Generation Facilities, Site Map and Project Schedule
Exhibit B	One-Line Diagrams of Project and Interconnection Facilities
Exhibit C	Description of Site
Exhibit D	Notice Addresses
Exhibit E	Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
Exhibit F	Commissioning Tests
Exhibit G-1	Insurance Coverages
Exhibit G-2	Form of Attestation and Bill of Sale
Exhibit H	Availability Guarantee
Exhibit I	Form of Seller Guaranty
Exhibit J	Commercial Operation Form of Certification
Exhibit K	Reserved
Exhibit L	Annual Generation Forecast
Exhibit M	PPA Functional Mapping
Exhibit N	Interconnection Metering Standard
Exhibit O	Commissioning and Testing Process
Exhibit P	Form of Lender Consent
Exhibit Q	Form of Estoppel Certificate

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

POWER PURCHASE AGREEMENT—**PALOMAS WIND FACILITY**

This Power Purchase Agreement – Palomas Wind Facility, as may be amended from time to time, is entered into this 28th Day of May, 2026 ("**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 Palomas Power LLC ("**Seller**"), whose principal place of business is 1088 Sansome Street, San Francisco, CA 94111. Buyer and Seller may be referred to in this PPA individually as a "**Party**" and collectively as the "Parties."

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

WHEREAS, Seller desires to develop, design, construct, own and operate a wind energy electric generating facility with an expected total maximum power output of approximately four hundred (400) MW ("**Project**"), as further defined herein and in Exhibit A; and

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

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

"**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 accepts communications from the System Control Center and automatically adjusts the generation quantity of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Change of Control**" means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding direct or indirect equity or voting interests in Seller (without regard to unforeclosed-upon pledges to Seller's Lender's or interests held by any Tax Equity Investors in connection with a Tax Equity Financing); provided that a Change of Control will exclude any Seller Permitted Transfer.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

"**Commercial Operation**" means that the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) Wind Turbines with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) Seller has obtained all Seller required permits, required consents and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law and all such permits, consents and Governmental Approvals are in full force and effect, (c) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Energy to the Point of Delivery in an amount at least equivalent to the Guaranteed Capacity and is not in material breach of its Interconnection Agreement, (d) Seller has satisfactorily completed all of the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures, (e) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement, (f) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G-1 of this PPA, and (g) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

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

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

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

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

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

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

"**Compensable Curtailment**" means any curtailment of the Project, that is not a Seller Curtailment to the extent such curtailment during a calendar year has exceeded 82,000 MWh for each calendar year; *provided*, that for any period the Project is operating for less than a full

calendar year, 82,000 MWh shall be pro-rated for the applicable portion of the calendar year in which the Project is operating within such calendar year and the determination of any Compensable Curtailment shall be based on such pro-rated amount.

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

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

"**Creditworthy**" or "**Creditworthiness**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa3" or higher by Moody's, (b) "BBB-" or higher by S&P, and (c) "BBB-" or higher by Fitch.

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

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

"**DC**" means direct current.

"**Deemed Energy**" means the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Compensable Curtailment. Deemed Energy (MWh) shall be calculated using (i) the Wind Turbine manufacturer's power curve as provided in the Wind Turbine supply agreement, and (ii) wind data (wind speed, ambient temperature, barometric pressure, air density) determined by the computer monitoring system for each Wind Turbine that is part of the Project adjusted to account for electrical losses in delivering Energy to the Point of Delivery. The calculation of Deemed Energy will consider all or a portion of the Wind Turbines taken out of service due to the curtailment but excluding any Wind Turbines taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery.

The Parties agree that Deemed Energy shall be calculated for each interval in which curtailment occurs, defined as when

(a) the Actual Output ("AO") (i) is decreasing towards the Setpoint ("SP") at a rate greater than or equal to 10 MW per minute, or (ii) is at or below the Setpoint; and

(b) the Setpoint is less than both the Nameplate capacity and the Potential

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Power ("PP") output.

For each such interval, Deemed Energy shall be calculated as the difference between Potential Power and the greater of Actual Output or SP, converted to MWh. Any calculated values that are less than zero shall be excluded from the final Deemed Energy amount, such that Deemed Energy shall not be negative. This methodology ensures that only energy curtailed as a direct result of the curtailment instruction is included and that reductions in output attributable to other causes are not counted as Deemed Energy.

$$Deemed\ Energy\ (MWh) = MAX\left(\frac{PP - MAX(AO, SP)}{12}, 0\right)$$

Where:

- PP represents the modeled available power based on meteorological data;
- AO represents measured unit output;
- SP represents the applicable Setpoint; and
- Division by 12 converts five-minute intervals to MWh.

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

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

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

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

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

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

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

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

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

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

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

"**Downgrade Event**" is when a Person fails to maintain Creditworthiness.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

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

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission System as set forth in Appendix A of the Interconnection Agreement.

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

"**Eligible Change in Tariff**" means any 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 Project.

"**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.

"**Energy Output**" means Metered Output, Environmental Attributes (including but not limited to RECs) and Ancillary Services generated by the Project.

"**Energy Output Payment Rate**" is defined in Section 3.1.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

"**Fitch**" means Fitch Ratings Inc and any successor thereto.

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

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on 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.

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

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

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

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

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

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

"**Interconnection Agreement**" means, collectively or individually as the context may require, the separate agreements between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreements may be amended, amended and restated, modified, replaced or otherwise supplemented 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 (or an analogous term, to the extent the Interconnection Agreement is amended or replaced).

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

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

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

"**Lender(s)**" means any and all Persons other than an Affiliate of Seller: (a) lending money or extending credit (including any financing lease, monetization of Tax Benefits, construction, back-leverage or paygo financing, Tax Equity Financing or credit derivative

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

arrangement) to Seller or to an Affiliate of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing (including tax equity bridge financing), credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) for any capital improvement or replacement related to the Project; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

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

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

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

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

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

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

"**Mid-State Agreement**" means the Development and Construction Agreement contemplated in that certain Term Sheet between Public Service Company of New Mexico, acting in its transmission function, and Mid-State Transmission LLC, dated on or around the date hereof.

"**Mid-State Approvals**" means, collectively, a Location Approval, Right Of Way Width Determination, and Certificate of Convenience and Necessity issued by NMPRC for the Mid-State Transmission Line.

"**Mid-State Transmission Line**" means a new 345 kV transmission line from Western Spirit 345 kV Station to Hidden Mountain 345 kV Station.

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

"**Monthly Billing Period**" means each Month during the Term in which Energy Output has been generated by Seller for Buyer and delivered to the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

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

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

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

"**Period Hours**" has the meaning set forth in Exhibit H.

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

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

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

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

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

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

"**Project**" means Seller's wind energy generation facility with a capacity of four hundred (400) MW at the Point of Delivery located in Torrance County, New Mexico which will produce the Energy Output made available to Buyer under this PPA, including one or more of Seller's Wind Turbines and Seller's Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this PPA, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the conversion and/or generation facilities, including the Wind Turbines, generators, step-up transformers, output

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

breakers, Seller's Interconnection Facilities necessary to connect to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Energy Output subject to this PPA.

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

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

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

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

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

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

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

generally used for electric generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating at least five hundred (500) MW, in the aggregate, of wind generation and that is trained on the functionality and operation of wind generation technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) Creditworthiness, and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility), or (b) is reasonably acceptable to Buyer.

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

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

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

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Renewable Energy Certificate**" or "**REC**" means a WREGIS Certificate as defined by the WREGIS Operating Rules and all Environmental Attributes associated with the generated energy. Seller must deliver RECs that are compliant with the requirements of the New Mexico Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended.

"**Replacement Energy Costs**" means the costs to Buyer reasonable and necessary to replace Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein and based upon similar terms, conditions and performance standards outlined in this PPA) which Seller, in accordance with this PPA, was obligated to deliver to Buyer but failed to provide pursuant to this PPA. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Attributes (including RECs) and Ancillary Services delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Energy Output to the Point of Delivery and any associated transmission or distribution costs, (b) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Energy Output, and (c) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this PPA.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community or, His Majesty's Treasury or any, and each other sanctions authority which has jurisdiction in respect of any Party or the Project.

"**SCADA**" means the Project's remote supervisory control and data acquisition system, which includes all necessary components and contact points at the Project.

"**Scheduled Maintenance Outage**" means a time during which any portion of the Installed Capacity is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"Scope Reporting Rule" means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 Code of Federal Regulations § 229.1500, et seq., and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Buyer voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

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

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Security**" means Development Security or Delivery Term Security, as applicable.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

"**Seller Curtailment**" means any time the Project is unable to deliver Energy to the Point of Delivery. It shall not be a Seller Curtailment due to actions of the Transmission Provider or if the Buyer is unable to receive otherwise available Energy at the Point of Delivery.

"**Seller Excused Hours**" means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Compensable Curtailment, (b) a Force Majeure Event, (c) any failure by Buyer to perform a material obligation under this PPA (other than due to a breach by Seller of its obligations under this PPA), or (d) weather conditions that exceed equipment manufacturer's specifications. Seller Excused Hours includes any curtailment that is not considered a Seller Curtailment.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Project to the Point of Delivery not associated with Seller Excused Hours.

"**Seller Guarantor**" means a Person that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Parties**" means: (a) Seller's Affiliates; (b) owners, directors, officers and employees of Seller or Seller Affiliates; and (c) representatives, agents, and subcontractors of Seller and/or Seller Affiliates, in each case, providing services on behalf of, or engaged by, Seller or Seller Affiliates in connection with this PPA and any activity contemplated hereunder or thereunder (and a "Seller Party" is any one of the foregoing).

"**Seller Permitted Transfer**" means any of the following: (a) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Ultimate Parent retains the ability to control the management and policies of Seller; (b) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction or (iii) a direct or indirect transfer to an entity of 50% or more of the shares of, or equity interests in, Seller so long as Seller remains Controlled by Seller's Ultimate Parent; *provided*, that in the case of (b), (A) the transferee is a Qualified Transferee, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to any Seller's Lender and any subsequent assignee, designee or transferee thereof; provided that in the case of (c), (A) the Seller's Lender or its applicable assignee, designee or transferee is a Qualified Transferee and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements.

"**Seller Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Buyer to Seller, less any amounts owed from Seller to Buyer, plus (b) the

difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Energy Output) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; provided that if (b)(i) is less than (b)(ii), then zero, plus (c) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or in entering into new arrangements which replace this PPA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this PPA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this PPA.

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this PPA. This PPA is Site specific, and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval. Adding or subtracting contiguous parcels of property or modifying the layout of turbines or strings within the Site will not be deemed a relocation requiring Buyer consent.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of generating units, including the Wind Turbines.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority.

"**Term**" means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Energy**" means any and all Energy Output generated by the Project and delivered to Buyer during the Test Period.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date; provided, however, in no event shall the Test Period be longer than one hundred and twenty (120) Days.

"**Trade Control**" means any of the following: Sanctions, applicable export and import controls and U.S. antiboycott law, excluding any blocking rules or other countermeasures which are administered or enforced by any Governmental Authority, other than a Governmental Authority of the United States, the United Kingdom, the European Union, or the United Nations.

"**Transmission Provider**" means the Person, designated agent, or third party acting in its transmission function capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means Pattern Energy Group LP.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

"**Weather Stations**" has the meaning set forth in Section 10.11(A).

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

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**Wind Turbine**" means a single wind turbine generating system, including the nacelle, rotor, tower, pad, and controller system, installed as part of the Project.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

"**WREGIS Qualified Reporting Entity**" as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS Certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules and WREGIS Terms of Use.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this PPA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this PPA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this PPA, the terms of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) All uses of the word "shall" in this PPA are to be interpreted as imperative and not permissive.

(H) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this PPA as a whole.

(I) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(J) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or."

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this PPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power to the Project for any purpose ("House Energy"). Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter Energy generated and delivered by the Project in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this PPA are not binding upon the Local Provider. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this PPA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and for House Energy, backfeed power and station service power or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy, backfeed power and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term.

(A) This PPA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Standard Time on the date that is the last Day of the twentieth (20th) Commercial Operation Year (the "**Term**"), subject to the early termination provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

(B) If (i) Transmission Provider has not filed for the Mid-State Approvals with the NMPRC by October 31, 2026, (ii) Transmission Provider has not delivered the "Development Completion Acknowledgement" for the Mid-State Transmission Line under the Mid-State Agreement by March 31, 2028, or (iii) the Mid-State Agreement has otherwise been terminated prior to March 31, 2028, then Buyer or Seller may within 30 days of such date terminate this PPA without payment or penalty owed by either Party and Buyer shall return the Development Security.

(C) If Seller or its affiliate has not received Determinations of No Hazard from the Federal Aviation Administration (or equivalent documentation to construction in airspace) for all of the Wind Turbines comprising the Project on or prior to June 30, 2027, unless the Parties mutually agree that such Determinations of No Hazard are reasonably likely to be received by September 30, 2027, then Buyer or Seller, for the 30 days following June 30, 2027, may terminate this PPA and in the event of such a termination Buyer shall return the Development Security.

ARTICLE 3

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this PPA, as each term is more fully set forth in this PPA:

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	**Seller:** Palomas Power LLC
Project: Palomas Power LLC	
Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer and delivers to Buyer the Energy Output being provided under this PPA, as further specified in the definition of "Point of Delivery".	
Delivery Term: Twenty (20) Commercial Operation Years	**Guaranteed Capacity (MWs):** 400 MW at the Point of Delivery
Product Type: Bundled Energy, Ancillary Services, RECs, and Environmental Attributes	**Energy Output Payment Rate:** $64.55/MWh, as further specified in Section 8.1(A).
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: September 30, 2029	

3.2 Project.

(A) Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

(B) Exhibit L identifies the expected first year total annual Energy to be delivered from the Project to the Point of Delivery and the corresponding capacity factor. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Wind Turbines at the Site. Seller will provide notice to Buyer of the final proposed location of the Wind Turbines and Interconnection Facilities at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the terms of this PPA and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Section 3.4(A) through Section 3.4(H), and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N Interconnection Metering Standard from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) deliver Energy to Buyer, at the frequency specified by Buyer;

(F) be capable of both full load and idle operation over an ambient temperature range of -30ºC to 45ºC with the full range of relative humidity or as otherwise set forth in the manufacturer's specifications;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of immediate disconnection remotely by the System Control Center;

The Project shall meet or exceed the recommended performance specifications of this Section 3.4(I) through Section 3.4(K), and as appropriately defined in IEEE Standard 2800-2022 Section 5, Section 6 and Section 7 at the Point of Delivery at all times;

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(I) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Section 5 at the Point of Delivery;

(J) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Section 7 at the Point of Delivery, which shall be Category II minimum;

(K) 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

(L) No later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the Project. These controls shall include the following MESA-ESS modes or equivalent: (i) Active Power Smoothing, (ii) Automatic Generation Control, and (iii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Section 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this PPA, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis (a) up to a maximum of one hundred fifty (150) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event (together with a reasonable period for the affected Party to cure the Force Majeure Event as contemplated in Section 14.2) that delays construction or commencement of operation of the Project, (b) 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 (or otherwise in accordance with the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Interconnection Agreement), or (c) other than in connection with or arising out of or relating to any Force Majeure Events or the interconnection of the Project, (i) if Seller notifies Buyer that Seller requires a performance from Buyer of Buyer's obligations under Exhibit F or Exhibit O, and (ii) Buyer does not timely perform such obligations, then on a day-for-day basis without an aggregate cap for the time period for the days of delay beyond Buyer's failure to perform in a timely manner to the extent such failure by Buyer to perform 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 the Expected Commercial Operation Date is extended pursuant to clause (a) or (b) of this Section for the maximum extension period set forth in the applicable clause, then Buyer will have the right to terminate this agreement without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Capacity and the Installed Capacity as of the determination date. The Delay Damages and, if applicable, Buyer Termination Payment subject to the limitations set forth in Section 12.3(B), are the Buyer's sole and exclusive monetary remedies, and Seller's sole and exclusive monetary liabilities, for Buyer's damages due to any delays in achieving, or failure to achieve, the Expected Commercial Operation Date.

3.8 Capacity Shortfall Damages. If the Commercial Operation Date is declared before the full Guaranteed Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Six Hundred Thousand Dollars ($600,000) per MW of Delayed Capacity (as of the Guaranteed Start Date) ("**Capacity Shortfall Damages**") as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed Capacity, in which case the Guaranteed Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Energy. Seller shall, no later than forty-five (45) Days prior to the beginning of the Test Period, give written notice to Buyer of its NERC-registered Generator Owner and Generator Operator and designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M. 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

timing and delivery of Test Energy to Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of the Test Period.

(B) Seller shall retain Public Service Company of New Mexico as its WREGIS Qualified Reporting Entity to report to WREGIS under the WREGIS Operating Rules, unless agreed to otherwise by Buyer. Seller shall document and provide information required for the Qualified Reporting Entity to record RECs with WREGIS for the Test Energy generated prior to the Commercial Operation Date, including but not limited to production data and REC vintage. To the extent that Seller does not provide the necessary information or WREGIS does not provide WREGIS Certificates for the Test Energy, Seller shall (a) provide the RECs for a quantity of Energy equivalent to the quantity of such Test Energy or (b) reimburse Buyer for Buyer's reasonable and documented costs to replace RECs for a quantity of Energy equivalent to the quantity of such Test Energy.

3.10 Notice of Commercial Operation. Not less than sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than one hundred and twenty (120) 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, and all the requirements of Commercial Operations have been met, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) Business Days after the date set forth in the Commercial Operation Notice. If Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this PPA is not prohibited by Applicable Law. Any breach of this Section 3.11 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.12 Eligible Change in Tariff. To the extent an Eligible Change in Tariff occurs between the Execution Date and one year after NMPRC Approval that requires Seller to take additional actions to comply with Seller's obligations under this PPA and the costs associated with such actions, if they had been reasonably contemplated as of the Execution Date, increase Seller's costs by more than one and a half percent (1.5%) of the Contract Value at Contract execution, 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; Curtailment

4.1 AGC; Curtailment.

(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 capable of controlling each Wind Turbine. Beginning on the Commercial Operation Date and in response to directives from the System Control Center, Seller shall curtail the Project by use of the AGC system to effect Buyer's curtailment rights pursuant to this Section 4.1. 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.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to curtail the Project by use of the AGC system to effect a curtailment pursuant to this Section 4.1(B). Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations. If the Project's AGC set-point control is switched to Local status, Seller shall notify Buyer as soon as possible, detailing the rationale behind the change of status. Buyer maintains the right to enforce any curtailment as required for the protection of Buyer's systems. Such curtailment rights do not provide the Buyer with any rights to direct the operation of the Project. For a Compensable Curtailment only, Buyer shall pay Seller an amount equal to the sum of the Energy Output Payment Rate multiplied by the Deemed Energy associated with the number of Compensable Curtailment MWh. Buyer shall have the right to review and approve Seller's calculations and data utilized to develop the calculations of Deemed Energy. Deemed Energy results shall be trued up to correct for consistently biased calculation error based on assessment of normal operations periods before and after any given curtailment event.

(C) Seller shall reduce Energy Output from the Project during and to the extent of any curtailment.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Seller shall be responsible for the costs of interconnection and costs required to deliver the Energy from the Project to Buyer at the Point of Delivery at the required voltage and frequency, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to the Project's output up to the Point of Delivery.

(B) [Reserved].

(C) On a Day-ahead basis, and no later than 4:00 a.m. MST, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer at the Point of Delivery. Each Friday, and no later than 12:00 noon MST, Seller shall provide Buyer a weekly Project generation forecast for the following week based on equipment availability. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond, including as necessary under participation in any regional market, including the EIM or the EDAM, if any.

(E) Seller shall provide to Buyer a one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O. 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.

(F) Seller shall be responsible for separately sourcing, metering and payment for an electrical power supply and associated power consumption for the Project House Energy.

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.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices, including Primary Metering Devices and redundant metering ("**Back-Up Metering**") with independent current transformers ("**CTs**") and potential transformers ("**PTs**"), are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be purchased and installed, in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. 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 power and Energy, if supplied by the generation system. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided* that the Parties may revise this loss adjustment based on actual experience. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, secondary, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A) and the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices or Secondary Metering are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device or Secondary Metering fails to register, or if the measurement made by an Electric Metering Device or Secondary Metering is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall first use Back-up Metering, followed by Secondary Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that such Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

ARTICLE 6
Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this PPA are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

(B) [RESERVED].

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; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this PPA.

ARTICLE 7
Sale and Purchase of Energy Output

7.1 Sale and Purchase of Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Energy Output delivered by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase Energy Output from the Project when and to the extent that (a) a Party's performance is excused by a Force Majeure Event, (b) a Compensable Curtailment is continuing, (c) a Seller Forced Outage is continuing, or (d) a Scheduled Maintenance Outage is continuing. Furthermore, and without limiting Section 10.7, Buyer shall not be required to receive or purchase Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Capacity as adjusted for losses to the Point of Delivery. In no event shall Seller have the right to procure any element of the Energy Output from sources other than the Project for sale or delivery to Buyer under this PPA.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Energy from the Project up to delivery and receipt at the Point of Delivery, and Buyer shall be deemed to be in control of such Energy from the Project from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy from the Project shall transfer from Seller to Buyer at the Point of Delivery. Title related to any Environmental Attributes and Future Environmental Attributes shall transfer from Seller to Buyer upon generating of the Energy from the Project.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such Future

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Environmental Attributes is included in the Energy Output Payment Rate as Energy Output and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any Future Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this PPA such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements and any other applicable guidelines. Buyer shall control scheduling of Metered Output. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Energy Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall provide Buyer with a good faith estimate of the hourly quantities of Energy Output that Seller expects to generate in the following Commercial Operation Year ("**Projected Schedule**"). Seller shall also provide estimates of the daily quantity of Energy to be delivered to Buyer. Seller shall configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than ten (10) MW per minute. Buyer is not required to provide this Project as a participating resource in a regional market.

(B) [RESERVED]

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week. Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly quantities of Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(D) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Seller Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

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

ARTICLE 8
Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to (i) the sum of (a) the aggregate amount of Energy Output (MWh) delivered to Buyer at the Point of Delivery from the Project, plus (b) the Deemed Energy resulting from Compensable Curtailment, multiplied by (ii) the Energy Output Payment Rate. The **Energy Output Payment Rate** is the sole payment from Buyer to Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Energy Output Payment Rate includes all Taxes.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this PPA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, Monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail, including an Attestation and Bill of Sale verifying the associated RECs and Environmental Attributes, if applicable, in the form of Exhibit G-2 ("**Attestation and Bill of Sale**").

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this PPA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this PPA shall be made in Dollars in immediately available cleared funds by wire transfer or electronic funds transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the lower of (i) the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) and (ii) the maximum interest rate allowed by Applicable Law ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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. A Party must notify the other Party of any error within three hundred sixty-five (365) Days of such error.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this PPA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Gross Receipts Tax is applicable to the sale or delivery of Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Energy Output and on Buyer's payment and Seller's receipt of amounts due under this PPA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Energy Output to Buyer pursuant to this PPA.

(B) Seller shall be responsible and shall pay when due all income, gross

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this PPA and implement the provisions in this PPA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this PPA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this PPA, including Section 9.9 below, all payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this PPA, including damages and other payments that are owed by a Party to the other Party pursuant to this PPA. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this PPA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

under this PPA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, Applicable Law and this PPA. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer Monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key Project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent Monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-13-16 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 Day 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 62-13-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 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 Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this Agreement with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least sixty (60)

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Days' prior notice of the approximate test date and ten (10) Days prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this PPA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this PPA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five-minute and real-time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Energy Output delivered by Seller will meet all requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. Seller shall provide Buyer with all real time measurement parameters of the Project including individual Wind Turbine 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.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(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, Section 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 standards 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 or applicable NERC maintenance interval. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day's written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than thirty (30) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "Operating Procedures"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity and Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this PPA, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this PPA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 calendar year. Should Buyer desire to change the reporting dates noted above, the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's generation, including the duration of such event. Each Scheduled Maintenance Outage will be subject to approval by Buyer, not to be unreasonably withheld. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Project's generation for any reason at any time during May 1st through September 30th (except if such interruption or reduction would not cause the Project's capacity to fall below the Guaranteed Capacity), without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Metered Output to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Seller shall not sell or divert Energy Output to any Person other than Buyer.

10.8 [Reserved].

10.9 [Reserved].

10.10 [Reserved].

10.11 Weather Stations.

(A) Seller shall, at Seller's cost and no later than the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations (**"Weather Stations"**) at the Project Site to monitor and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by Seller's engineer and agreed to by Buyer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall be of a grade equivalent to or better than those used in large-scale utility wind facility installations

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

and include the capability for measuring, indicating, and recording ambient temperature, barometric pressure, wind speed and direction (instantaneous and average), and relative humidity. Seller shall submit to Buyer for review and approval, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all Wind Turbines and other prominent features, as applicable. The Weather Stations shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to be maintained by Seller and to provide an unrestricted, real-time indication of all measured parameters to Buyer, and the data shall be available to Buyer via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted (subject to Seller's software licenses) real-time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations. Data collected from the Weather Stations shall be utilized for determination of the performance ratio, system availability, and lost output due to curtailment or outages.

10.12 Monthly Operational Report. Not later than the fifteenth (15th) Day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; meteorological data; 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. If any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.13 [Reserved].

ARTICLE 11
Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer within ten (10) Days of the RECs being created in WREGIS and available for transfer. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within ten (10) Days after written notice from Buyer of such failure, and such failure is due to Seller's fault or negligence. The RECs and Environmental Attributes transferred under

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

this PPA are bundled with the associated Energy.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Buyer may, to the extent permitted by Applicable Law and this PPA, assign its rights, title and interest in and to any RECs and Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Seller shall, at its sole expense and prior to the commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the creation and tracking all Renewable Energy Certificates associated with all Metered Output, including Test Energy. Such actions shall include installing a meter on the low side of Seller's step-up transformer and ensuring that all corresponding WREGIS Certificates are issued, tracked, and transferred to Buyer in a timely manner. The Parties acknowledge that Seller's registration of the Project with WREGIS requires achievement of the Commercial Operation Date. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account.

(E) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(F) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, which shall be Public Service Company of New Mexico, unless agreed to otherwise by Buyer.

(G) Seller shall not report in any public communication, or under any program, that any of the Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer. Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Environmental Attributes for Buyer to own, hold and manage in Buyer's own name and account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Environmental Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Environmental Attributes, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy, and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. To the extent that any such public communication is allowed under Section 13.1, in any public communication concerning the Project, Project Energy or the Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Project Energy.

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with 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 voluntarily taking advantage of any such law by answer or otherwise;

(4) Except with respect to Energy Output during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Energy Output, RECs or Ancillary Services committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this PPA or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this PPA, or other date mutually agreed to by the Parties in writing;

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA on more than three occasions in any rolling thirty-six consecutive

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

month period;

(8) The Project fails, after the third anniversary of the Commercial Operation Date, to maintain an Actual Availability Percentage of at least eighty percent (80%) over two (2) successive Commercial Operation Years; provided, however, for a single occurrence during the Term of this Agreement for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Actual Availability Percentage calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(8);

(9) The Project fails to obtain an Actual Availability Percentage of at least fifty-five percent (55%) over any Commercial Operation Year; provided, however, for a single occurrence during the Term of this PPA for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Actual Availability Percentage calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(9); or

(10) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The failure of Seller to make any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

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

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) Seller's failure to make any payment due to Buyer under or in connection with this PPA (subject to Seller's rights with respect to disputed

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this PPA), unless remedied within thirty (30) Days of receipt by Seller of written notice of such failure from Buyer;

(6) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice;

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA, unless remedied within five (5) Business Days of receipt of notice of such failure; or

(8) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to deliver Energy Output to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including the Interconnection Agreement) required to deliver Energy to the Point of Delivery;

(3) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this PPA;

(4) Seller's failure to maintain in effect any agreements required to deliver Energy Output to the Point of Delivery;

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

(6) Seller fails to register the Project within WREGIS or should Future Environmental Attributes become available, fails to ensure timely

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

registration of the Future Environmental Attributes in accordance with the terms of this PPA.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this PPA, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise; or

(4) Buyer's assignment of this PPA except as permitted in accordance with Article 18.

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Buyer to cure within thirty (30) Days of written notice from Seller to Buyer.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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; or

(2) Any representation or warranty made by Buyer in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this PPA from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security, and (v) exercise its rights to terminate this PPA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party. 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(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.

(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.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material performance obligation of the other Party under this PPA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss. The Parties agree that the Termination Payment does not represent such waived consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this PPA,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this PPA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 13
Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this PPA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this PPA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this PPA as specified herein

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this PPA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) monthly construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Energy Output from, the Project in accordance with this PPA, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this PPA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

performed on the Wind Turbines.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, Exhibit C, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. If 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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. If 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**" means an event or circumstance that arises, after the Execution Date, that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this PPA is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

any full or partial curtailment in the Energy Output of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of two hundred seventy (270) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this PPA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. If any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 Seller notifies Buyer of a Force Majeure Event that affects the ability of Seller to deliver Energy Output from the Project to the Point of Delivery, then any lost production (MWh) during the continuance of such Force Majeure Event shall be a Seller Curtailment.

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) Subject to Section 2.1(C), to the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have upon the generation of Energy Output, good and marketable title to the RECs, Environmental Attributes, and Future Environmental Attributes.

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

(L) All right, title and interest in and to the RECs, Environmental Attributes and Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this PPA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(P) [Reserved]. and

(Q) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

ARTICLE 16
Insurance

16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter within thirty (30) Days of the annual insurance policy renewal or update or change of the insurance policy, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G-1 and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the Term of this PPA on an "occurrence" basis. If any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G-1 within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this PPA, to request Seller to modify the insurance minimum limits specified in Exhibit G-1 in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this PPA is primary and non-contributory with respect to other insurance carried by Buyer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G-1 names Buyer and its respective 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-1 shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

ARTICLE 17
Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the PPA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this PPA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of NMPRC Approval in connection with (i) the execution and performance of this PPA; and (ii) any waivers as set forth in Buyer's request for approval of this PPA (collectively, "**Requested Actions**"). An NMPRC order that defers action on cost recovery to a future case shall not be a material adverse financial order. In particular:

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(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 with no material adverse financial determination, which final written order is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, *provided* that each of Seller and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties may meet and confer at the request of Buyer concerning whether this PPA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This PPA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if Buyer does not request that the Parties meet and confer; or (ii) if such a request is made by Buyer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this PPA should remain in effect. Upon automatic termination, this PPA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer will amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA. If the Parties are unable to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by December 31, 2026 ("**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 PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to

any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

ARTICLE 18
Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; (ii) a Seller Permitted Transfer; or (iii) any assignment or transfer of this PPA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA.

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, or consolidation of Buyer or its parent corporation, *provided* that such assignee delivers evidence

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this PPA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this PPA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this PPA with the Affiliate as if such Person had been named under this PPA; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this PPA made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico and licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders

(A) Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this PPA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this PPA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this PPA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this PPA to Seller's

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Lenders pursuant to this Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this Agreement.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed Capacity, (the "**Development Security**"), the first Fifty Thousand Dollars ($50,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Fifty Thousand Dollars ($50,000) per MW of which will be posted no later than two (2) years prior to the Expected Commercial Operation Date. 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 and provided the Delivery Term Security. If no amounts are due and owing under this PPA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) Day after termination of this PPA in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination; provided that combining forms of Security shall be subject to the discretion of Buyer:

(a) cash, (b) a Letter of Credit in form acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) Days before expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or ten (10) Business Days if the only event is that the credit rating of the issuer bank of a Letter of Credit has fallen below the Issuer Minimum Requirements) (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this PPA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under the Development Security or Delivery Term Security, as applicable to recover any amounts owing to it arising out of this PPA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this PPA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this PPA, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this PPA.

ARTICLE 20
Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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)

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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. If 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 to the applicable Governmental Authority all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Energy Output that are imposed on the making available of Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid to the applicable Governmental Authority all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Energy Output that are imposed at and from the taking of Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22
Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this PPA, this PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

22.12 Counterparts. This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this PPA shall be brought in the United States

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

District Court for the District of New Mexico; the Parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS PPA. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED**.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "Disclosing Party" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, investors or prospective purchasers of the Project, technical advisors, contractors, consultants, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care).

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic), and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this PPA, the Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or Receiving Party's Representatives;

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this PPA that relates solely to this PPA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this PPA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall, prior to disclosure, inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall immediately notify Buyer 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

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

(A) Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this PPA and the Environmental Attributes that are to be generated under this PPA and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this PPA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this PPA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Seller will provide Buyer with reasonable access to the Project, including building(s) (if any), for Buyer, Affiliates and invitees for the sole purpose of presenting information about the Project. Subject to Section 10.3, Seller will enable Buyer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this PPA constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the PPA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the 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 Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within sixty (60) 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,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

and cash flows of Seller Guarantor or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

(F) Seller shall provide Buyer all such information as Buyer shall reasonably request for Buyer compliance with the Scope Reporting Rule.

22.19 Telephone Recording. Each Party to this PPA acknowledges and agrees to the

taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this PPA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. If a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this Agreement in accordance with Section 12.4. In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any actual, potential, threatened, or requested breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Governmental Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. Seller will ensure that the contractors and subcontractors it retains in connection with this PPA expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to an Event of Default under Section 12.1(B), Buyer shall have no obligation to make further payments hereunder following termination of this Agreement other than all payments due to Seller during the Term of this Agreement as of such termination date.

22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party to be responsible for, exporting and importing any equipment or property Seller or Seller Parties require to perform the services under this Agreement, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority.

(B) In no instance may Seller or Seller Parties list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List, or (ii) originated, offloaded or transferred to a different ship or carried in any Sanctioned Territory.

(D) The Seller shall provide to Buyer all Trade Control related documentation as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with) or respond to inquiries from any Government Authority in relation to, Trade Controls.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not (directly or indirectly) engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure that the Seller Parties it retains in connection with the performance of its obligations under this Agreement expressly agree in writing to the trade controls undertakings, representations, and warranties substantially similar to the provisions in this Section 22.21.

(H) Notice. If (a) Seller becomes aware that any breach of the terms of this Section 22.21 has occurred, is likely to occur, or (b) Seller or any Seller Party has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days of obtaining knowledge thereof.

(I) Excusal and Release. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal or not reasonably practicable under Sanctions.

(J) Subject to Section 12.1(B)(8), Buyer may terminate this Agreement, within five (5) days and without further liability, upon written notice to the Seller, if the Seller has breached this Section 22.21 (A), (B), (C), or (E) in which case, the Buyer shall have no obligation to make further payments following termination of this Agreement; provided that to the extent permitted by Sanctions, Buyer has made all payments due to Seller during the Term of this Agreement as of the termination date

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

22.22 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this PPA, the Parties shall negotiate in good faith to amend this PPA to resolve such changes in order to effect performance of this PPA, at the least possible cost to the Parties, consistent with this PPA, including Section 7.4(A). To the extent that the Parties are unable to do so, either Party may initiate the process set forth in Section 13.8.

[Signature page(s) follow]

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

IN WITNESS WHEREOF, the Parties have caused this PPA to be duly executed as of the date first above written. This PPA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Laurie Williams B87ED845D25E4D9...

Name Laurie A. Williams

Title Senior Vice President

PALOMAS POWER LLC DocuSigned by: 00212837E5444A3...

By _____

Name Amy Smolen

Title Vice President

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT A
DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE

1. Name of Seller's Project: Palomas Power LLC

2. Location: San Miguel and Torrance Counties, New Mexico

3. Owner (if different from Seller): N/A

4. Operator: Seller or Seller's Affiliate

5. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Wind

   b. Total number of units at the Project: at least 89

   c. Total nameplate capacity: at least 400 MW

   d. Additional technology-specific information: N / A

   e. Project includes: at least eighty-nine (89) 4.5MW wind turbines with 163 meter rotors atop 104 meter towers.

6. Project Schedule:

Key Milestone	Date
Interconnection Agreement Execution (650 MW)	10/30/2026
Major Equipment Supply Agreements Executed	12/31/2027
Discretionary Permits	3/31/2028
Close Financing	3/31/2028
30% Design Complete	1/31/2028
Start of Project Construction	3/31/2028
First Major Equipment Delivered to Site	9/30/2028
Interconnection In-Service Date	11/30/2028
Commissioning Start Date	4/1/2029

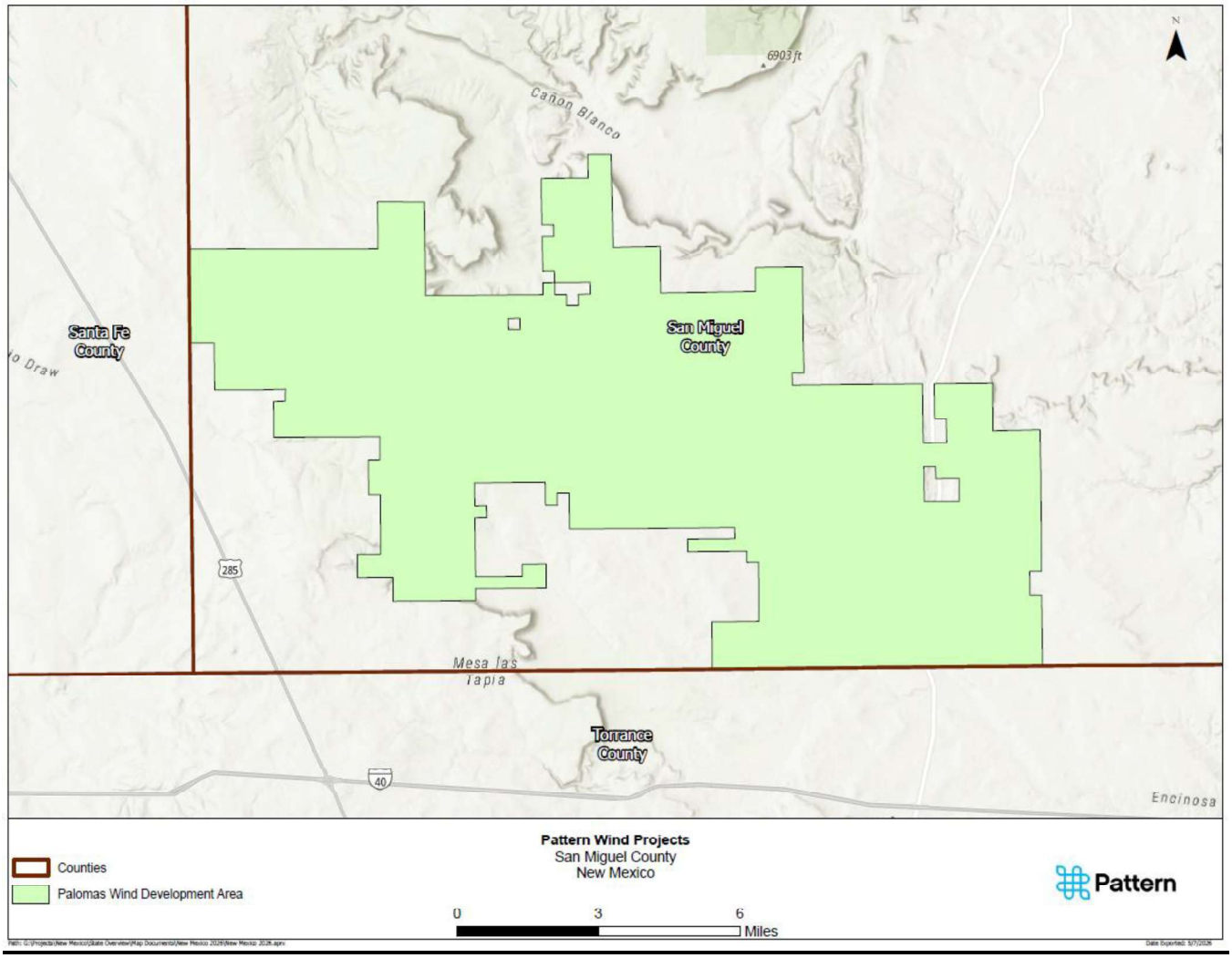
Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Expected Commercial Operation	9/30/2029
Guaranteed Start Date	2/28/2030

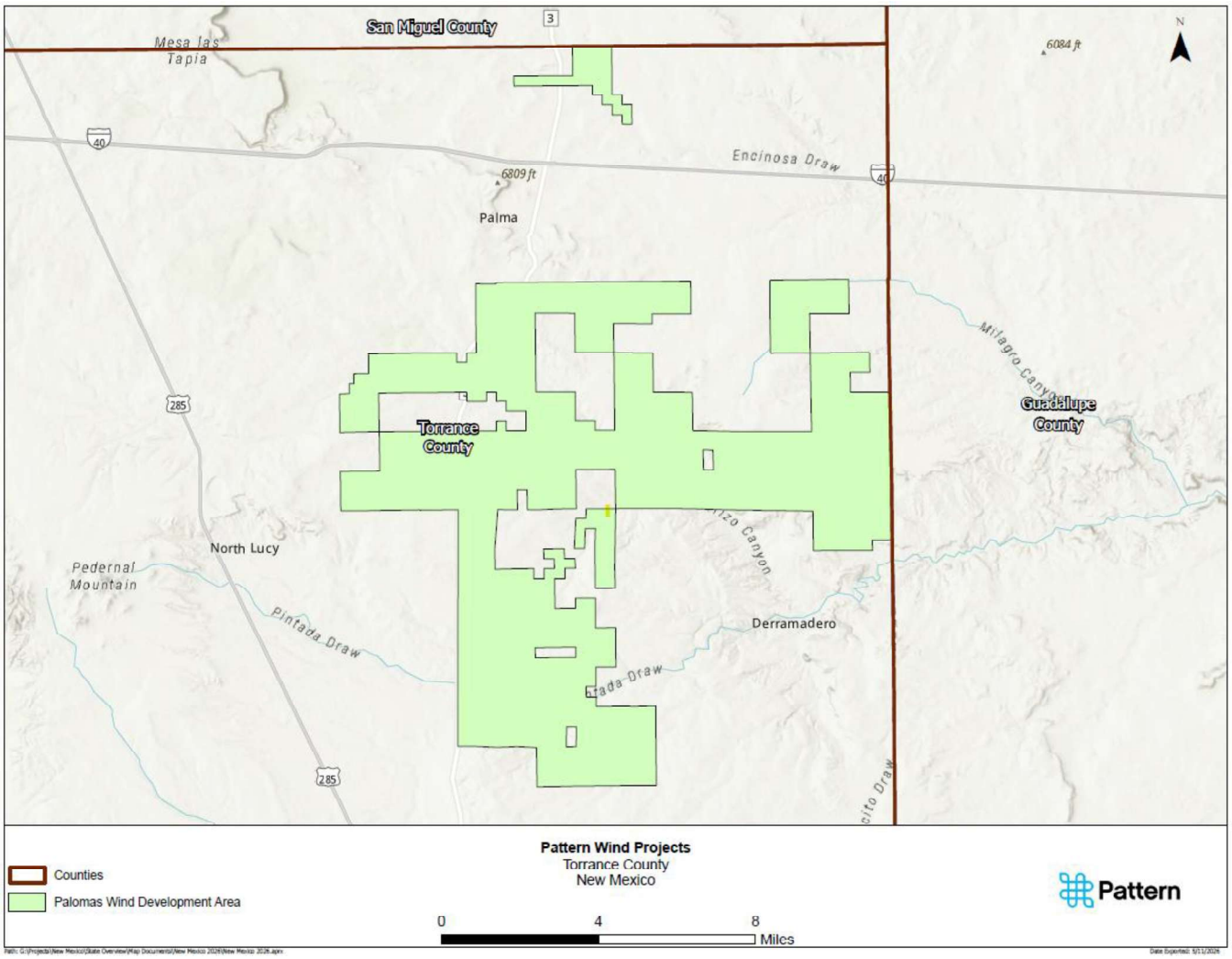
Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.

Site Map (San Miguel County)



Site Map (Torrance County)



Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT B
ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

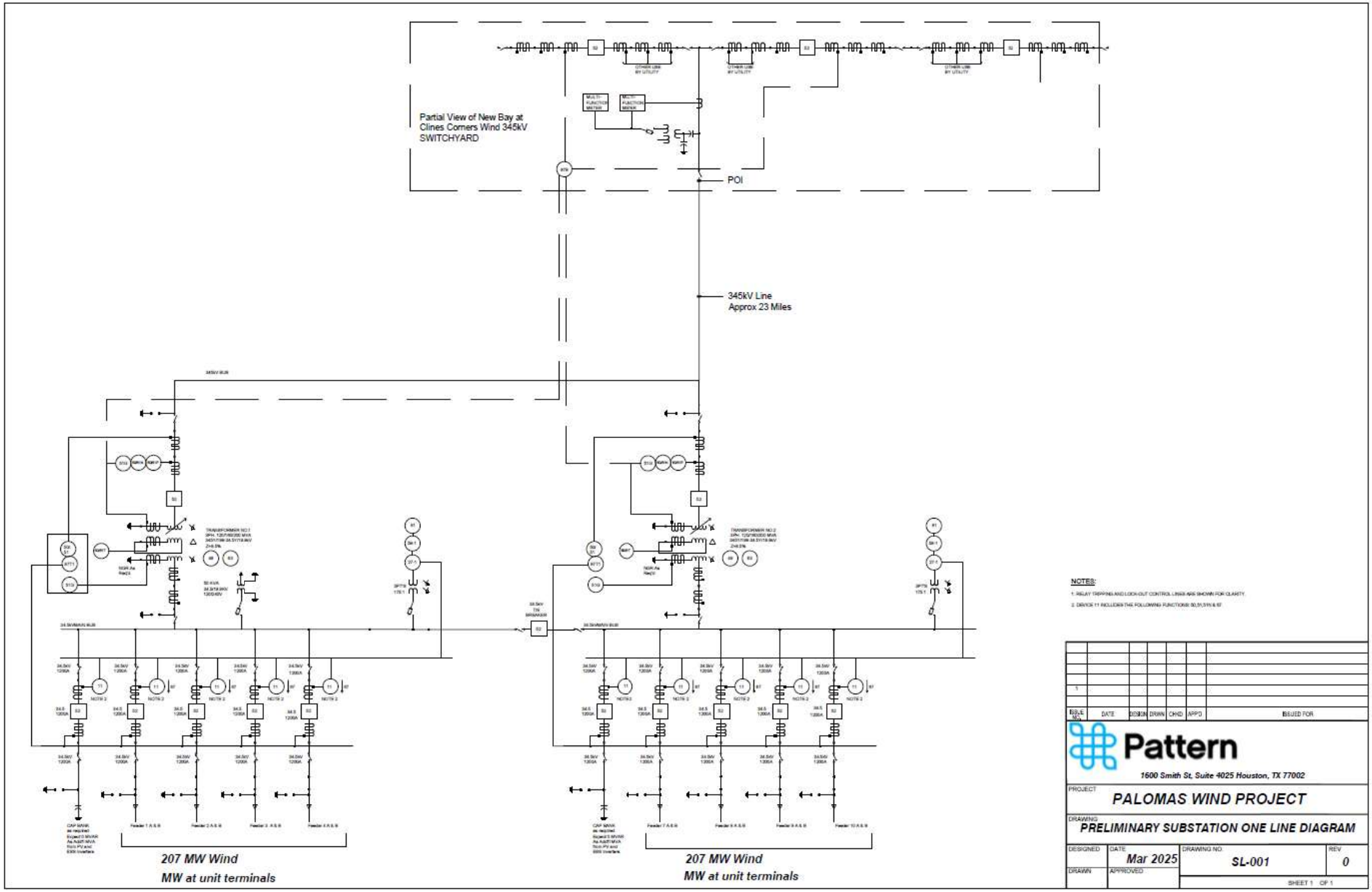
1. See attached one-line diagram and communications and telemetry diagram of the Project. The diagrams indicate the following:

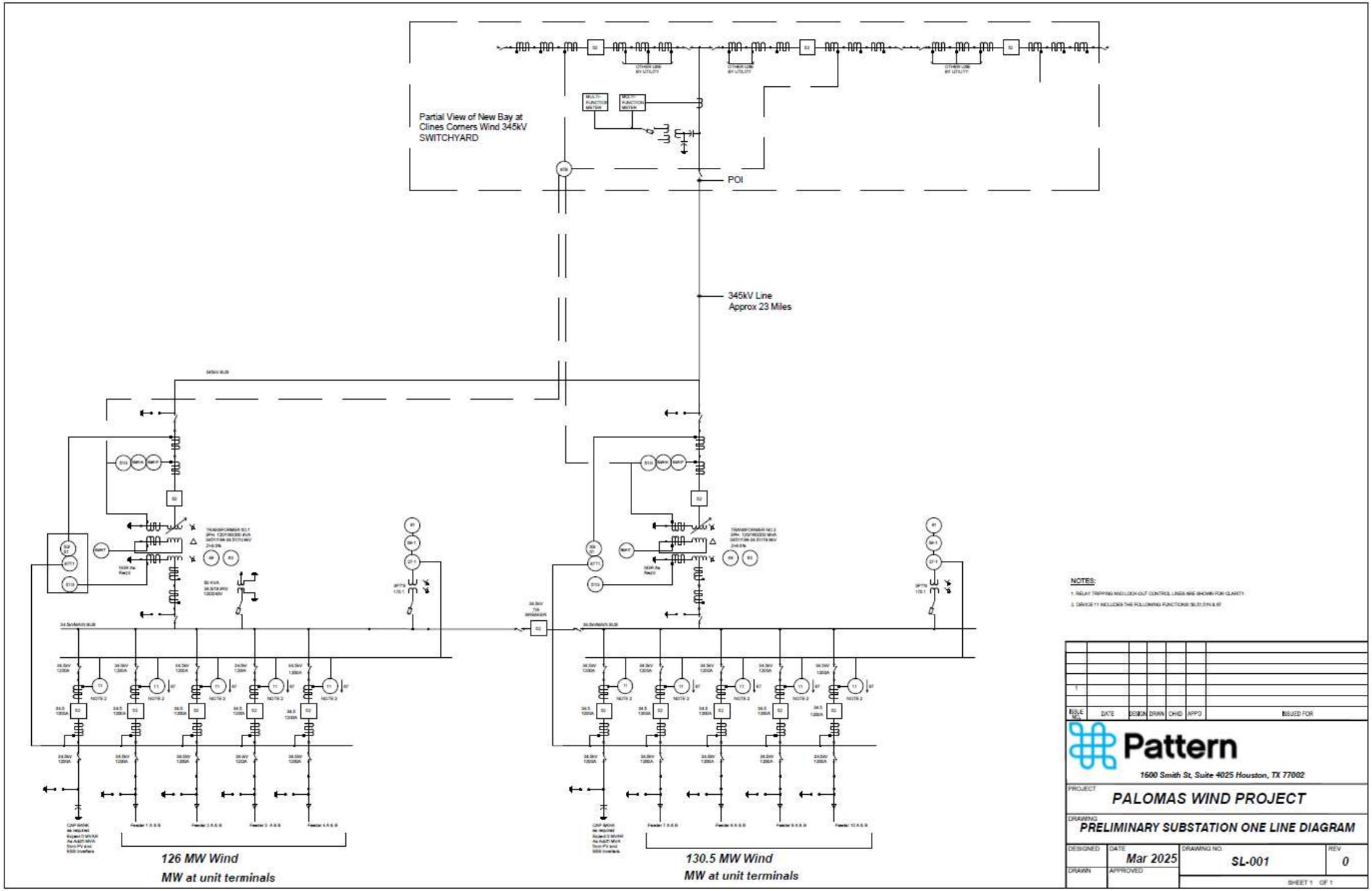
    - Interconnection Facilities;
    - the network upgrades;
    - the Electric Interconnection Point;
    - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
    - communications and telemetry configuration with associated redundancy;
    - the House Energy 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 Western Spirit Switchyard.


Partial View of New Bay at
Clines Corners Wind 345kV
SWITCHYARD
POI
345kV Line
Approx 23 Miles
207 MW Wind
MW at unit terminals
207 MW Wind
MW at unit terminals
NOTES:
Pattern
1500 Smith St, Suite 4025 Houston, TX 77002
PROJECT
PALOMAS WIND PROJECT
DRAWING
PRELIMINARY SUBSTATION ONE LINE DIAGRAM
DESIGNED
DRAWN
DATE
Mar 2025
APPROVED
DRAWING NO.
SL-001
REV
0
SHEET 1 OF 1


Partial View of New Bay at
Clines Corners Wind 345kV
SWITCHYARD
POI
345kV Line
Approx 23 Miles
126 MW Wind
MW at unit terminals
130.5 MW Wind
MW at unit terminals
NOTES:
Pattern
1600 Smith St, Suite 4025 Houston, TX 77002
PROJECT
PALOMAS WIND PROJECT
DRAWING
PRELIMINARY SUBSTATION ONE LINE DIAGRAM
DESIGNED
DRAWN
DATE
Mar 2025
APPROVED
DRAWING NO.
SL-001
REV
0
SHEET 1 OF 1

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT C
DESCRIPTION OF SITE[1]

TRACT A:

Torrance Co. TOWNSHIP NINE (9) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 1: S/2 N/2, SE/4, S/2 SW/4, NE/4 SW/4
SECTION 2: LOTS 3 and 4
SECTION 3: LOTS 1 and 2
SECTION 11: S/2 NW/4, N/2 SW/4
SECTION 12: NW/4 NW/4

TOWNSHIP NINE (9) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 2: LOT 3, SE/4 NV/4, SW/4 SE/4, S/2 SW/4
SECTION 3: S/2 S/2
SECTION 4: S/2 SE/4
SECTION 5: SW/4 NE/4, SE/4 NW/4, NW/4 SE/4, NE/4 SW/4
SECTION 11: E/2 NE/4, NW/4 NE/4
SECTION 12: E/2 SW/4, NW/4 SW/4, SW/4 NW/4

San Miguel Co. TOWNSHIP TEN (10) NORTH, RANGE TWELVE (12) EAST, NMPM

SECTION 1: NE/4
SECTION 2: E/2 NE/4
SECTION 3: NW/4 NE/4 (LOT 2)
SECTION 10: E/2 SE/4
SECTION 11: W/2 SW/4
SECTION 13: S/2 NE/4, NE/4 SE/4
SECTION 14: S/2 NE/4, N/2 SE/4
SECTION 22: N/2 SE/4
SECTION 23: S/2
SECTION 24: SW/4, W/2 SE/4
SECTION 26: E/2 NW/4, W/2 NE/4

[1] NTD: To be updated ~60 days prior to COD.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 20: NE/4, NE/4 SE/4
SECTION 21: N/2, N/2 S/2, S/2 SE/4
SECTION 22: ALL
SECTION 25: W/2 W/2, S/2 SE/4, NE/4 SE/4, SE/4 SW/4
SECTION 26: ALL
SECTION 27: ALL
SECTION 28: E/2, SW/4, NE/4 NW/4, S/2 NW/4
SECTION 29: W/2, E/2 NE/4, S/2 SE/4, NE/4 SE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 W/2, NE/4, W/2 SE/4, SE/4 SE/4
SECTION 31: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 32: ALL
SECTION 33: ALL
SECTION 34: ALL
SECTION 35: ALL
SECTION 36: ALL

TOWNSHIP ELEVEN (11) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 19: LOTS 3 & 4, E/2 SW/4, SE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 31: LOTS 1, 2, 3, 4, E/2 W/2, NE/4, N/2 SE/4, SW/4 SE/4

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

TOWNSHIP TEN (10) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 3: S/2 S/2
SECTION 6: S/2 N/2, N/2 SW/4, W/2 SE/4, NE/4 SE/4
SECTION 12: E/2 E/2
SECTION 13: N/2, SE/4, N/2 SW/4
SECTION 14: N/2 SE/4
SECTION 18: LOT 3
SECTION 20: S/2 SW/4
SECTION 23: S/2 NE/4
SECTION 24: S/2 NW/4, NE/4, NE/4 SE/4
SECTION 29: N/2 NW/4
SECTION 30: LOT 1, NE/4 NW/4, N/2 NE/4

TOWNSHIP TEN (10) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 4: S/2 SW/4
SECTION 6: NE/4 SE/4
SECTION 8: SW/4
SECTION 9: W/2 NE/4, SE/4 NE/4, N/2 SE/4, NE/4 SW/4, N/2 NW/4
SECTION 10: S/2 N/2, N/2 S/2, SE/4 SE/4, S/2 SW/4,
Less and except 11.174 acres deeded to the State of New Mexico for State Road 3, by Warranty Deed recorded in Book 229, of deeds page 5796.
SECTION 11: S/2 NW/4, W/2 SW/4
SECTION 14: NW/4 SW/4
SECTION 15: NW/4 NW/4, E/2 W/2, N/2 SE/4, SW/4 SE/4, less and except 5.907 acres deeded to the State of New Mexico for State Road 3, by Warranty Deeds in Book 229, pages 5793 and 5795.
SECTION 17: NW/4 NW/4, E/2 W/2
SECTION 19: Lots 3 and 4, SE/4 SW/4
SECTION 20: N/2 NW/4, SE/4 NW/4, SW/4 NE/4, N/2 SE/4, SE/4 SE/4
SECTION 21: SW/4 SW/4
SECTION 26: SE/4
SECTION 28: NW/4 NW/4, E/2 W/2
SECTION 30: E/2 NW/4, SW/4 NE/4, W/2 SE/4, SE/4 SE/4
SECTION 31: N/2 NE/4
SECTION 32: NW/4, NE/4 SE/4
SECTION 33: E/2 NW/4, NW/4 SE/4, N/2 SW/4
SECTION 34: SW/4 NW/4, SW/4 NE/4, W/2 SE/4, SE/4 SE/4, SW/4, Less and except 7.372 acres deeded to the State of New Mexico for State Road 3, by Warranty Deed recorded in Book 229, of deeds page 5794.

TOWNSHIP ELEVEN (11) NORTH, RANGE TWELVE (12) EAST, NMPM

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 29: SW/4 SW/4
SECTION 30: S/2 SE/4
SECTION 31: NW/4 NE/4
SECTION 34: SW/4 NE/4, E/2 NE/4, W/2 SE/4, SW/4
SECTION 35: E/2 SE/4, W/2 NW/4

TOWNSHIP ELEVEN (11) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 20: SW/4 SE/4
SECTION 25: NE/4, E/2 NW/4, NE/4 SW/4, NW/4 SE/4
SECTION 29: W/2 NE/4, NW/4 SE/4

TRACT B:

Torrance Co. TOWNSHIP NINE (9) NORTH, RANGE ELEVEN (11) EAST, NMPM

SECTION 2: ALL
SECTION 16: N/2

TOWNSHIP NINE (9) NORTH, RANGE TWELVE (12) EAST, NMPM

SECTION 2: E/2, NW/4, W/2 SW/4

TOWNSHIP NINE (9) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 2: LOTS 1 and 2, S/2 N/2, S/2

TOWNSHIP NINE (9) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 2: LOTS 1, 2 and 4, S/2 NE/4, SW/4 NW/4, N/2 S/2, SE/4 SE/4
SECTION 16: ALL

Santa Fe Co. TOWNSHIP TEN (10) NORTH, RANGE ELEVEN (11) EAST, NMPM

SECTION 5: SW/4, S/2 SE/4
SECTION 6: S/2
SECTION 7: LOTS 1, 2, 3, 4, E/2 W/2, E/2
SECTION 8: ALL
SECTION 9: ALL
SECTION 16: ALL
SECTION 17: ALL

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 18: LOTS 1, 2, 3, 4, E/2 W/2, E/2
SECTION 19: LOTS 1, 2, 3, 4, E/2 W/2, E/2
SECTION 20: N/2, SE/4
SECTION 21: ALL
SECTION 22: ALL
SECTION 27: ALL
SECTION 28: ALL
SECTION 29: N/2 N/2, SW/4 NW/4, SW/4, S/2 SE/4, SE/4 NE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 N/2, E/2
SECTION 32: ALL
SECTION 33: ALL
SECTION 34: ALL
SECTION 35: NW/4

San Miguel Co. TOWNSHIP TEN (10) NORTH, RANGE TWELVE (12) EAST, NMPM

SECTION 1: LOTS 3, 4, S/2, S/2 NW/4
SECTION 2: LOTS 2, 3, 4, S/2, S/2 NW/4, SW/4 NE/4
SECTION 3: LOTS 1, 3, 4, S/2 N/2, S/2
SECTION 4: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 5: LOT 1, E/2 SE/4, SE/4 NE/4
SECTION 11: N/2, SE/4, E/2 SW/4
SECTION 12: ALL
SECTION 13: W/2, N/2 NE/4, S/2 SE/4, NW/4 SE/4
SECTION 14: W/2, N/2 NE/4, S/2 SE/4
SECTION 15: NE/4 NE/4
SECTION 16: SW/4, W/2 SE/4
SECTION 22: S/2 SE/4
SECTION 23: N/2
SECTION 24: N/2, E/2 SE/4
SECTION 25: N/2
SECTION 26: E/2 NE/4
SECTION 27: S/2 SE/4
SECTION 28: ALL
SECTION 29: N/2, SE/4, E/2 SW/4
SECTION 32: ALL
SECTION 33: ALL
SECTION 34: N/2, N/2 S/2, S/2 SW/4, SE/4 SE/4
SECTION 35: ALL
SECTION 36: ALL

TOWNSHIP TEN (10) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 1: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 2: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 3: LOTS 1, 2, 3, 4, S/2 N/2, N/2 S/2

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 4: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 5: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 6: LOTS 1, 2, 3, 4, 7, SE/4 SW/4, SE/4 SE/4
SECTION 7: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 8: ALL
SECTION 9: ALL
SECTION 10: ALL
SECTION 11: ALL
SECTION 12: W/2, W/2 E/2
SECTION 13: S/2 SW/4
SECTION 14: W/2, NE/4, S/2 SE/4
SECTION 15: ALL
SECTION 16: ALL
SECTION 17: N/2 NE/4, SW/4 NE/4
SECTION 32: ALL
SECTION 36: ALL

TOWNSHIP TEN (10) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 2: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (CALL)
SECTION 3: LOTS 1, 3, 4, S/2 NW/4, SW/4, SE/4 NE/4, NE/4 SE/4
SECTION 4: LOTS 1, 2, 3, 4, S/2 N/2, SE/4, N/2 SW/4
SECTION 5: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 6: LOTS 1, 2, 3, 4, 5, 6, 7, SE/4 NW/4, S/2 NE/4, E/2 SW/4, W/2 SE/4, SE/4 SE/4
SECTION 7: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 8: N/2, SE/4
SECTION 9: S/2 S/2, S/2 NW/4, NW/4 SW/4, NE/4 NE/4
SECTION 10: N/2 NW/4
SECTION 11: E/2, N/2 NW/4, E/2 SW/4
SECTION 12: ALL
SECTION 13: ALL
SECTION 14: E/2, E/2 W/2, SW/4 SW/4
SECTION 15: W/2 SW/4, SW/4 NW/4, SE/4 SE/4, less and except 1.322 acres conveyed to the New Mexico State Highway Commission by Grant of Right-of-Way, recorded in Book 230, page 1395.
SECTION 16: ALL
SECTION 17: E/2, W/2 SW/4, SW/4 NW/4
SECTION 18: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 19: LOTS 1, 2, E/2, E/2 NW/4, NE/4 SW/4
SECTION 20: SW/4, SW/4 NW/4, N/2 NE/4, SE/4 NE/4, SW/4 SE/4
SECTION 21: N/2, SE/4, E/2 SW/4, NW/4 SW/4
SECTION 22: ALL
SECTION 23: ALL
SECTION 24: ALL

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 25: NW/4, W/2 NE/4, S/2
SECTION 26: N/2, SW/4
SECTION 27: ALL
SECTION 28: E/2, W/2 SW/4, SW/4 NW/4
SECTION 29: ALL
SECTION 30: LOTS 1, 2, 3, 4, E/2 SW/4, N/2 NE/4, SE/4 NE/4, NE/4 SE/4
SECTION 31: LOTS 1, 2, 3, 4, E/2 W/2, SE/4, S/2 NE/4
SECTION 32: NE/4, SW/4, W/2 SE/4, SE/4 SE/4
SECTION 33: NE/4, S/2 S/2, W/2 NW/4, NE/4 SE/4
SECTION 34: N/2 N/2, SE/4 NW/4, SE/4 NE/4, NE/4 SE/4
SECTION 35: ALL
SECTION 36: ALL

Less and except from the above lands in Sections 22, 27 and 34, a total of 38.204 acres conveyed to the New Mexico State Highway Commission by Grant of Right-of-Way, recorded in Book 230, page 1393.

TOWNSHIP ELEVEN (11) NORTH, RANGE TWELVE (12) EAST, NMPM

SECTION 14: ALL
SECTION 19: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 20: ALL
SECTION 21: ALL
SECTION 22: ALL
SECTION 23: ALL
SECTION 25: ALL
SECTION 26: ALL
SECTION 27: ALL
SECTION 28: ALL
SECTION 29: N/2, N/2 S/2, SE/4 SW/4, S/2 SE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 W/2, NE/4, N/2 SE/4
SECTION 31: E/2 E/2, W/2 SE/4, SW/4 NE/4
SECTION 32: ALL
SECTION 33: ALL
SECTION 34: NW/4, NW/4 NE/4, E/2 SE/4
SECTION 35: SW/4, E/2 NW/4, NE/4, W/2 SE/4
SECTION 36: ALL

TOWNSHIP ELEVEN (11) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 8: SE/4
SECTION 9: S/2, NE/4
SECTION 16: ALL
SECTION 17: NE/4, E/2 SE/4, SW/4 SE/4

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 20: NE/4, NE/4 SE/4
SECTION 21: N/2, N/2 S/2, S/2 SE/4
SECTION 22: ALL
SECTION 25: W/2 W/2, S/2 SE/4, NE/4 SE/4, SE/4 SW/4
SECTION 26: ALL
SECTION 27: ALL
SECTION 28: E/2, SW/4, NE/4 NW/4, S/2 NW/4
SECTION 29: W/2, E/2 NE/4, S/2 SE/4, NE/4 SE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 W/2, NE/4, W/2 SE/4, SE/4 SE/4
SECTION 31: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 32: ALL
SECTION 33: ALL
SECTION 34: ALL
SECTION 35: ALL
SECTION 36: ALL

TOWNSHIP ELEVEN (11) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 19: LOTS 3 & 4, E/2 SW/4, SE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 31: LOTS 1, 2, 3, 4, E/2 W/2, NE/4, N/2 SE/4, SW/4 SE/4

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

PARCEL A

Township Six (6) North, Range Twelve (12) East, N.M.P.M.

All of Sections 1

Township Six (6) North, Range Fourteen (14) East, N.M.P.M.

All of Sections 1, 3

Township Seven (7) North, Range Fourteen (14) East, N.M.P.M.

All of Sections 5, 8, 17, 20, 21, 23, 27, 28, 29, 33 and 35

The Lots 1 and 2, SW¼NE¼, SE¼NW¼ of Section 2

S½ of Section 9
S½SW¼, NE¼SW¼, NW¼SE¼, S½NE¼, NW¼NE¼, NE¼NW¼ of Section 10
E½ of Section 11
SW¼, S½NW¼ of Section 14
S½ of Section 15
N½, S½S½ of Section 22

SE¼NE¼, N½SE¼, S½SW¼, NW¼SW¼ of Section 26
W½, W½E½, E½NE¼ of Section 34

LESS AND EXCEPT those portions of the W½ of Section 5, NE¼ of Section 6, W½ of Section 8, W½ of Section 17, E½ of Section 19, W½ of Section 20, SW¼, SW¼NW¼ of Section 29, E½ of Section 30 and E½ of Section 31 conveyed to the State Highway Department of New Mexico by Special Warranty Deed recorded in the records of the County Clerk of Torrance County, New Mexico in Book 247, Page 3077, on July 12, 1983.

LESS AND EXCEPT that portion of the NW¼NW¼ of Section 29 conveyed to the State Highway Department of New Mexico by Warranty Deed recorded in the records of the County Clerk of Torrance County, New Mexico in Book 247, Page 2399, on March 7, 1983.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Township Seven (7) North, Range Fifteen (15) East, N.M.P.M.

N½, N½S½, S½SW¼ of Section 1 E½E½,
W½NE¼, NW¼SE¼ of Section 2

Township Eight (8) North, Range Thirteen (13) East, N.M.P.M.

That portion of the NE¼SW¼ of Section 14 described in Warranty Deed to Bigbee Brothers Cattle Company recorded in the records of the County Clerk of Torrance County, New Mexico in Book 113, Page 403, on January 17, 1958.

S½SE¼, SE¼SW¼, NE¼SE¼ of Section 25

Township Eight (8) North, Range Fourteen (14) East, N.M.P.M.

SW¼SE¼ of Section 8
N½NE¼, SW¼NE¼, SE¼NW¼ of Section 11
N½N½ of Section 12
E½W½, NW¼NE¼ of Section 17
NE¼NW¼, NW¼NE¼ of Section 20
S½SE¼ of Section 22
S½SW¼ of Section 23
S½S½ of Section 25
NW¼NE¼, NE¼NW¼ of Section 26
W½W½, NE¼SW¼, S½SE¼, N½NE¼ of Section 27
SE¼NE¼, NE¼SE¼, SW¼NW¼ of Section 28
N½SE¼, SE¼NE¼ of Section 29
The Lot 4, E½SW¼ of Section 30
The Lot 1 of Section 31
SE¼NE¼, NE¼SE¼ of Section 33
NW¼SW¼, W½NW¼, NE¼NW¼, NW¼NE¼ of Section 34

Township Eight (8) North, Range Fifteen (15) East, N.M.P.M.

W½NE¼, NE¼NW¼, NW¼SE¼ of Section 10
NW¼ of Section 13
SW¼, N½SE¼, S½NE¼ of Section 14
S½NW¼, N½SE¼, SE¼SE¼ of Section 29
S½NE¼ of Section 30
NE¼NE¼ of Section 32
S½SE¼ of Section 35

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Township Six (6) North, Range Fourteen (14) East, N.M.P.M.

All of Section 2

Township Seven (7) North, Range Fourteen (14) East, N.M.P.M.

All of Sections 16, 32 and 36

The Lot 3, SW¼NW¼, W½SW¼, SE¼, SE¼NE¼ of Section 2
Township Seven (7) North, Range Fifteen (15) East, N.M.P.M.
W½, SW¼SE¼ of Section 2
Township Eight (8) North, Range Thirteen (13) East, N.M.P.M.

All of Sections 13, 23, 35 and 36

E½E½, W½SE¼, SE¼SW¼ of Section 14
N½, W½SW¼, NE¼SW¼, NW¼SE¼ of Section 25

Township Eight (8) North, Range Fourteen (14) East, N.M.P.M.
All of Sections 1, 2, 3, 4, 9, 13, 16, 18, 24, 32 and 36
E½ of Section 5
NE¼, N½SE¼, SE¼SE¼ of Section 8
S½, N½NW¼, SW¼NW¼, SE¼NE¼
of Section 11
E½E½, W½SE¼, SW¼NE¼, W½SW¼, SW¼NW¼ of Section 17

N½N½, S½NE¼, SE¼NW¼, E½SE¼, SW¼SW¼ of Section 21
N½, N½S½, S½SW¼ of Section 22
N½, N½S½ of Section 25
S½, S½N½, NE¼NE¼, NW¼NW¼ of Section 26
E½NW¼, S½NE¼, N½SE¼, SE¼SW¼ of Section 27
W½E½, E½W½, NE¼NE¼, NW¼NW¼, W½SW¼, SE¼SE¼ of Section 28
W½, N½NE¼, SW¼NE¼, S½SE¼ of Section 29
E½, NW¼, the Lot 3 of Section 30
S½, S½N½, N½NE¼, NE¼NW¼ of Section 31
W½, W½NE¼, NE¼NE¼, SE¼SE¼ of Section 33

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

S½S½, NE¼SW¼, SE¼NW¼, N½SE¼, S½NE¼, NE¼NE¼ of Section 34

Township Eight (8) North, Range Fifteen (15) East, N.M.P.M.

All of Sections 2, 3, 6, 19, 23, 24, 25, 26, 27, 28, 31, 33, 34 and 36

E½E½, SW¼SE¼, SW¼, S½NW¼, NW¼NW¼ of Section 10
N½N½, S½NW¼, S½SE¼ of Section 14
N½N½, S½NE¼, W½SW¼, SW¼SE¼ of Section 29
W½, N½NE¼, SE¼ of Section 30
S½, S½N½, N½NW¼, NW¼NE¼ of Section 32
N½, N½S½, S½SW¼ of Section 35

Township 6 North, Range 13 East, Torrance County, New Mexico:
Sections 21 and 28
Section 33 (W2; S2SW4)

Township 9 North, Range 14 East, Torrance County, New Mexico:
Section 23, 25, 26 and 36

Section	Township	Range	Subdivision	County
14	08N	14E	NE4NW4, NW4SW4, SE4NW4, SW4NW4, SW4SW4	Torrance
15	08N	14E	SE4SE4	Torrance
23	08N	14E	NW4NW4	Torrance
11	09N	14E	NE4NW4, NW4SE4, SE4NW4, SW4NE4, SW4SE4	Torrance
14	09N	14E	NE4SE4, NW4NE4, NW4SE4, SE4SE4, SW4NE4, SW4SE4	Torrance
13	10N	11E	NE4SE4, SE4NE4	Santa Fe

Section 14 8N14E NE4SW4 NW4NE4,

5	10N	12E	SW4SE4	San Miguel
7	10N	12E	NE4SE4, SE4SE4, SW4SE4	San Miguel
8	10N	12E	NE4SW4, NW4NE4, NW4SW4, SE4NW4, SW4NE4, SW4SW4	San Miguel
18	10N	12E	2, NE4NW4, NW4NE4, SE4NW4	San Miguel

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT D
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

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

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

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

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:
Wells Fargo Bank
ABA# 121000248
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

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

PALOMAS POWER LLC

All Notices/Invoices:
Delivery Address:
1088 Sansome St.
San Francisco, CA 94111
Attn: General Counsel
Phone: (415) 283-4000
Email: GeneralCounsel@patternenergy.com
Invoices:
Attn: Pattern Energy Settlements
Phone: 713-308-4200
Email:
AccountingSettlements@patternenergy.com

Mailing Address (if different from above):

Wire Transfer:
BNK: JPMORGAN CHASE BANK, N.A. - NEW YORK
ABA: 021000021
ACCT: 925912088

With additional Notice of an Event of Default, termination and other legal notices to:
Attn: General Counsel
Address: 1088 SANSOME ST. SAN FRANCISCO, CA 94111
Phone: (415) 283-4000
Email: GeneralCounsel@patternenergy.com

Project Manager:
Emergency Contact:
Attn: 24/7 Operations Control Center
Phone: (713) 308-4242
Email: PatternOCC@patternenergy.com

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

Public Service Company of New Mexico
Attention: Laurie Williams
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0641

With a copy to:

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT E

SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

Corresponding Authority	Document/Description
Bureau of Land Management (BLM)	Mining Plan, Contract for the Sale of Mineral Materials
Environmental Protection Agency (EPA)	National Pollution Discharge Elimination System (NPDES) Construction General Permits (CGP) & Notices of Intent
New Mexico Construction Industries Division	Building Permits for substation, O&M Building, foundations and transmission line
New Mexico Department of Transportation	Highway Access Permit
New Mexico Department of Transportation	Crossing Permit
New Mexico Energy, Minerals & Natural Resources Department	Gravel Pit Mine Registrations, if required
New Mexico Environment Department (NMED)	Air Quality General Permits for Concrete Batch Plants
New Mexico Environment Department (NMED)	Air Quality General Permits for Rock Crushing
New Mexico Environment Department (NMED)	Petroleum Storage Tank Registration, if required
New Mexico Environment Department (NMED)	On-site Septic/Sewage facility permit for O&M Buildings
New Mexico Public Regulation Commission (PRC)	Location Control Approval, Generation
New Mexico Public Regulation Commission (PRC)	Location Control Approval, Transmission
New Mexico Public Regulation Commission (PRC)	ROW Width Determination
New Mexico Regulation & Licensing Department, Construction Industries Division	Electrical Permit (Wind Turbine)

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

New Mexico Regulation & Licensing Department, Construction Industries Division	Building Permit (Foundations)
New Mexico Regulation and Licensing Department (RLD)	Electrical/Fiber Permits for collection circuits, WTG towers, substation and transmission line segments.
New Mexico State Engineers Office (SEO)	Groundwater/Surface Water Commercial Use, if required
San Miguel County	Conditional Use Permit for Wind Energy Facilities
San Miguel County	Road Use and Crossing Agreement, if required
Torrance County	Road Use and Crossing Agreement, as amended
Torrance County	Special Use Zone District Permit
United States Energy Information Administration (EIA)	EIA Plant Code Registration (Form 860)
United States Federal Aviation Administration (FAA)	Determinations of No Hazard to Air Navigation, if required
United States Federal Aviation Administration (FAA)	Notice of Actual Construction or Alteration (Form 7460-2), if required
US Army Corps of Engineers	Clean Water Act 404 Nationwide 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 this PPA.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT F
COMMISSIONING AND ANNUAL TESTING

Commissioning Tests

- Turbine Electrical Insulation Resistance and Continuity Tests (Generators, Cables, Transformers)
- MV Collection System Insulation Resistance and Continuity Tests
- GSU Transformer Testing
- Breaker and Switchgear Functionality Tests
- Turbine OEM Commissioning Procedures
- Pitch/Yaw System Commissioning and Functional Tests
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- SCADA Functionality Test (or equivalent)
  - Automatic Generation Control (AGC) Functionality Test (or equivalent)
  - Voltage Setpoint Functionality Test
  - Historian Data Link Functionality Tests (See Section 3.4)
  - Project Reliability Test
    a. Commissioning Performance Test (See Section 10.8)

Annual Tests

- Annual Performance Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

SCADA Functionality Test

Purpose:

This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering ("**POE**"). This test must be performed prior to energization of the Project.

Procedure**:**

Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Buyer 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.

Automatic Generation Control (AGC) Functionality Test

Purpose:

This test will demonstrate the ability of the Project to synch to AGC. This test will occur after

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

the Project has energized.

System starting state:

The Project will be in the on-line state and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure**:**

Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team four (4) to six (6) weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour operational activities.

Remote Mode Testing

Seller will set the Project to REMOTE mode, and verify the Project accepts AGC.

- Operator will send a setpoint to the Project
- Validate the Project responds to the setpoint
- Operator will send a setpoint above and/or below Project operation limits
    - Validate the Project sends alarms

Buyer's Operator will set the AGC Control mode to MARKET:

- Validate the Project responds to a DOT from CAISO
- Validate the setpoint and feedback matches the DOT

Buyer's Operator change the Project to MARKET in AGC

- Validate the Project changes the control mode

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG

- Hold for up to 10 minutes
- Validate the Project responds to ACE of +/- 10 MW

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Local Mode Testing

On-site personnel change the Project to LOCAL mode

- Validate the Project changes from REMOTE to LOCAL mode
- Validate the Project follows gross MW requested on-site
- Validate the Project does not respond to setpoint changes

System end state:

The Project will be in the on-line state and with control mode set to LOCAL.

B. Voltage Setpoint Functionality Test

[LATER]

C. Buyer Data Link Functionality Test

The Buyer Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Project control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party) and assist as necessary to set up the Buyer Data Link.

Seller shall prepare and submit to Buyer a Data Link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Buyer Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Buyer Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

D. Project Reliability Testing

D.1 Operational Reliability

A. Purpose of Test

To demonstrate the short-term reliability of the Project.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

B. Test Procedure

The Project shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the Project remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any material alarms, faults, trips, or manual intervention required.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT G-1
INSURANCE COVERAGES

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

A. Workers' Compensation Insurance that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million Dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Network Security and Privacy Liability. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

F. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

G. 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 PPA, 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 Seller under this PPA. 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Seller in performing services under this PPA. 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 Seller throughout the performance of services or storage of data in connection with this PPA and for at least three (3) years thereafter either through policies in force or through an extended reporting period. Seller shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Seller 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.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT G-2

FORM OF ATTESTATION AND BILL OF SALE

Pursuant to WREGIS, _____ ("Seller") hereby sells, transfers and delivers to Buyer the RECs and Environmental Attributes associated with the generation of Energy at the Project, as detailed in the Power Purchase Agreement between the Parties dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

_____
Name of Renewable Energy Facility

_____	_____	_____
Fuel Type	Maximum Power Output (MW)	Operation Date
_____	_____	_____
Dates		MWh generated
_____, 20___		_____

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents, to the best of its knowledge, as follows:

1. to the best of its knowledge, the information provided herein is true and correct;
2. its sale to Buyer is its one and only sale of the RECS and Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such RECS and Environmental Attributes;
3. the Project identified above produced the number of MWh above during the period indicated above;
4. Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and
5. Seller owns the _____ _____. [Name of the Renewable Energy Facility]

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

above referenced Energy.

Contact Person: _____
Phone: _____; Fax: _____

[Seller]

Signed: _____
Name: _____
Title: _____
Date: _____

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT H
AVAILABILITY GUARANTEE

Section 1. Definitions.

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

"**Actual Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Available Hours for all Wind Turbines that were part of the Project at the beginning of the relevant Commercial Operation Year, divided by (ii) the sum of all Period Hours in the relevant Commercial Operation Year for all Wind Turbines that were part of the Project on the Commercial Operation Date.

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

"**Annual Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Report**" has the meaning set forth in Section 2(5) of this Exhibit.

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

"**Available Hours**" means for each Wind Turbine, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Period Hours in such Commercial Operation Year, minus (b) the aggregate Unavailable Hours for such Wind Turbine in such Commercial Operation Year, plus (c) the aggregate Excused Hours for such Wind Turbine in such Commercial Operation Year. Any event that results in unavailability of a Wind Turbine 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 Wind Turbine is available, but for less than the full amount of its installed capacity, the Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Wind Turbine.

"**Excused Hours**" means, in any Commercial Operation Year, the aggregate Seller Excused Hours for such Commercial Operation Year. Any event that results in unavailability of a Wind Turbine 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 Wind Turbine is available, but for less than the full amount of its installed capacity, the Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Wind Turbine.

"**Guaranteed Availability Percentage**" has the meaning set forth in Section 2(1) of this Exhibit.

"**Period Hours**" means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, or eight thousand seven hundred eighty-four (8,784) hours for a Commercial Operation Year that encompasses a leap year, as may be prorated for any partial Commercial Operation Year.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

"**Unavailable Hours**" means those hours a Wind Turbine is not available to operate because it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Energy to the Point of Delivery. Any event that results in unavailability of a Wind Turbine 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 Wind Turbine is unavailable, but for less than the full amount of its installed capacity, the Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Wind Turbine.

"**Wind Turbine**" means a single wind turbine generating system, including the tower, pad, transformer and controller system, installed as part of the Project.

Section 2. Availability Guarantee.

1. Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Availability Percentage equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date ("**Guaranteed Availability Percentage**").

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

4. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed Availability Percentage shall be the payment of damages up to the Annual Availability Damages Cap and Aggregate Availability Damages Cap, and the right to declare an Event of Default pursuant to Sections 12.1(A)(8) and 12.1(A)(9), if and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies, including for Events of Default that may have caused Seller to fail to meet the Guaranteed Availability Percentage.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Availability Percentage for the previous Commercial Operation Year and the Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Availability Damages Cap has been reached, if applicable. If Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the PPA.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

ATTACHMENT 1 TO EXHIBIT H

EXAMPLE CALCULATION OF AVAILABILITY DAMAGES

I. Example of Actual Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 64 Wind Turbines were part of the Project.

The Wind Turbines had the following operating characteristics:

		Hours	Wind Turbines Affected	Wind Turbine Hours
	Period Hours ("PH")	8,760	64	560,640
	Unavailable Hours ("UH")			5,000
	Excused Hours ("EH")			1,000

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

Sum of Available Hours = PH – UH + EH: 556,640 = 560,640 – 5,000 + 1000

Actual Energy Availability Percentage

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

(a) Sum of Available Hours: 556,640 hours

(b) Sum of Period Hours: 560,640 hours

(c) Actual Availability Percentage: (Sum of Available Hours/Sum of Period Hours) x 100 = (556,640/560,640) x 100 = 99.3%

II. Example of Availability Damages

Example of Availability Damages based on the following assumed facts:

(a) Seller's Guaranteed Availability in Commercial Operation Year 4 = 90%.

(b) Seller's Actual Availability in Commercial Operation Year 4 = 85%.

(c) Energy Output Payment Rate = $20.00

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(d) Metered Output = 225,784 MWh

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

Energy Output Payment Rate x (Guaranteed Availability Percentage in Commercial Operation Year 4 — Actual Availability Percentage for Commercial Operation Year 4) x (Metered Output for Commercial Operation Year 4 ÷ Actual Availability Percentage for Commercial Operation Year 4 x Guaranteed Availability Percentage for Commercial Operation Year 4) = Availability Damage:

$20.00 x (.90 - .85) x (225,784 ÷ .85 *.90) = $239,065

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT I
FORM OF SELLER GUARANTY

GUARANTY

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

RECITALS:

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

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

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

* * *

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

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum

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

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

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

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

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

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

(a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(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.

a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

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

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

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

(d) The headings in this Guaranty are for purposes of reference only, and shall not affect the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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.

* * *

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

[●]
By:_____

Name:_____

Title:_____

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT J
COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by _____("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Wind Turbines with an aggregate capacity of at least ninety percent (90%) of Guaranteed Capacity have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Wind Turbine manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects.

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: _____

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT K
(Reserved)

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT L
ANNUAL GENERATION FORECAST

The following represents the annual P50 forecast of net, AC generation delivered to the Point of Delivery. On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

Month	On-Peak Energy Delivered (MWh)	Off-Peak Energy Delivered (MWh)
January	165,712	153,673
February	145,482	134,956
March	167,708	127,445
April	173,628	113,926
May	142,990	107,467
June	112,835	88,035
July	76,551	51,199
August	81,859	61,902
September	94,285	86,728
October	137,548	119,477
November	148,318	137,676
December	187,707	160,152
Total Annual	1,634,623	1,342,636
Total Combined Annual	2,977,259	
Annual Capacity Factor	42.43%	

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT M
PPA FUNCTIONAL MAPPING

The Project's NERC verified PPA Generator Owner, PPA Generator Operator and Scheduling Coordinator Contact functional mapping requirements information below 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)				

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT N
INTERCONNECTION METERING STANDARD

Exhibit N shall follow the current Interconnection Metering Standard for the Public Service Company of New Mexico.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT O
COMMISSIONING AND TESTING PROCESS

Section 1. Purpose.

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the PPA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the PPA and complete all testing as defined in Exhibit F of the PPA.

Figure 1 is for reference purposes only.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the PPA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.

CONTACT	Company	Group	Address	Project Role	Office Phone	Mobile Phone	E-MAIL
(name)	PNM	Generation Engineering	2401 Aztec Rd NE Albuquerque, NM 87107	Contract Manager	505-241-XXXX	505-241-XXXX	…@pnm.com

The POC List shall identify, but not be limited to, the following:

Buyer Team: Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 modeling for functionality required for the participating resource schedule coordination (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.

- "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- **"**Project Manager**" –** Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.

- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the generation systems. The OEM shall define and execute all OEM-required equipment and system testing.

- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.

- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.

- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

    - Balancing Authority (BA)
    - Transmission Owner (TO)
    - Transmission Operator (TOP)
    - Generator Owner (GO)
    - Generator Operator (GOP)
    - Scheduling Coordinator (SC)
    - Distribution System Operator (DSO)

Section 3. Process Overview.

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

Section 3.1 Commissioning Kickoff Meeting.

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

Section 3.2 Pre-Commissioning.

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

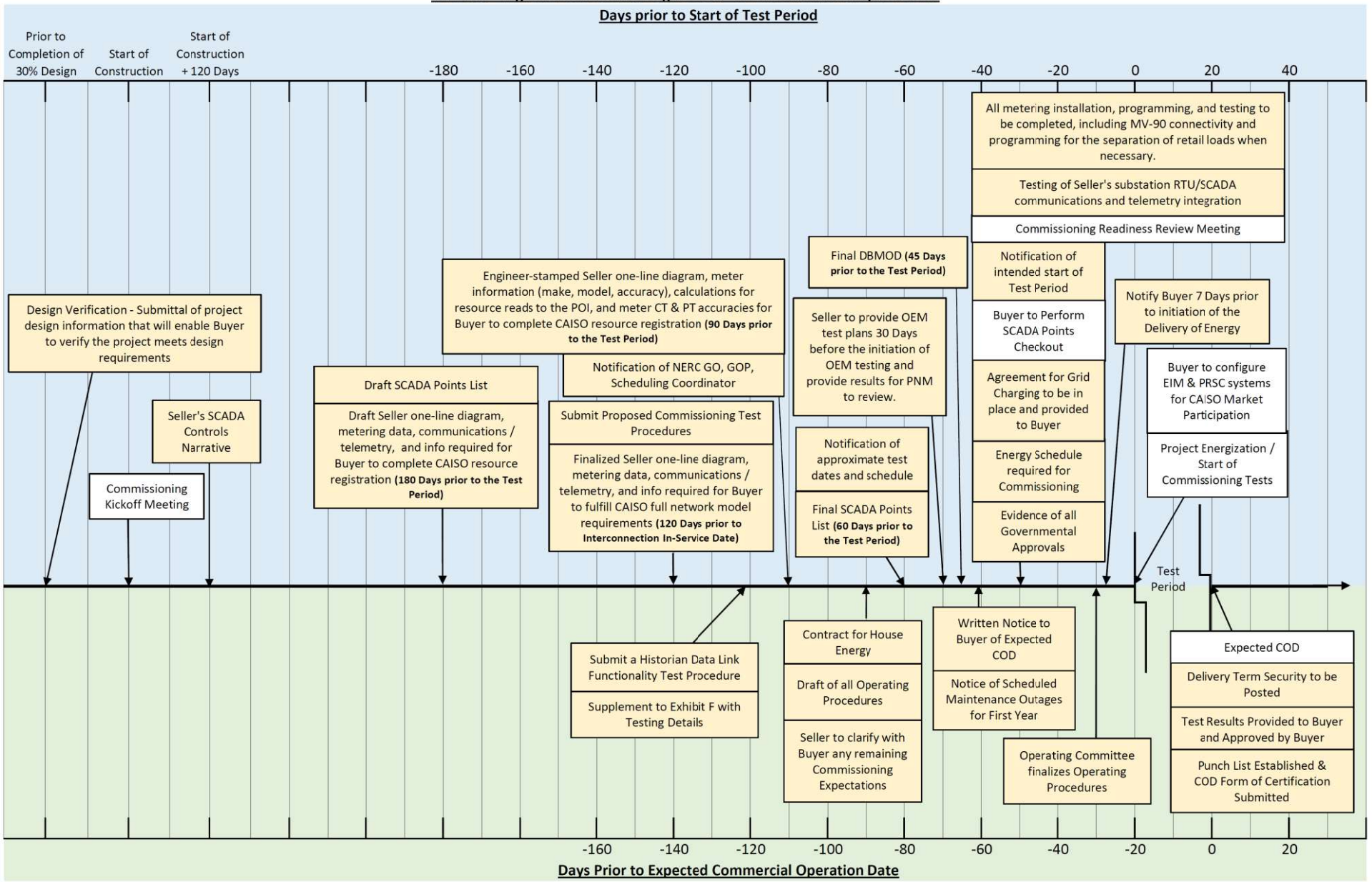
Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1:

TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving PPA obligations, including metering, etc.	**Seller**	Generation Engineering	After completion of IFC design phase of project
Seller's SCADA Controls Narrative	Controls narrative detailing items related to SCADA and telemetry planning.	**Seller**	PowerOps	120 Days after Start of Construction
	Mutually agreed upon SCADA points list file delivered to PowerOps.	**Seller**	PowerOps	10 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled generation resource performance testing.	**Seller**	Buyer's Project Manager	Prior to the scheduled performance testing
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	Prior to the scheduled performance testing
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. 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. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period.

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Power Operations & WPM Systems configuration	EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent generation resources for CAISO market participation.	**PowerOps & WPM IT Support**	Seller	Prior to the beginning of the scheduled Test Period
Operating Procedure	Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering.	**Seller**	PowerOps	90 Days prior to the Commercial Operation Date
	An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system.	**Seller/Buyer**	Seller / PowerOps / Generation Engineering	30 Days prior to the Commercial Operation Date
OEM Test Plan	The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide Buyer with a certificate from an officer certifying that the testing required under the supply agreement with OEM was satisfactorily conducted.	**Seller**	Generation Engineering	Prior to declaring COD. Seller's officer certification may be included in the certification required by clause (g) of Commercial Operation.
Test Energy Plan & Schedule	Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated PPA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans.	**Seller**	Generation Engineering	Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period.
Commissioning Readiness Review Meeting	Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: 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.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Section 3.3 Commissioning.

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the PPA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.
- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Historian Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the PPA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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, etc.

    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.

    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.

    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.

    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.

    d. Telemetry for Seller's substation awareness shall include:

        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - Generation resource total gross values and total net values (in both

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

MW and MVAr)

- Gross and net values shall be provided for each resource registered with CAISO

- Point of Delivery values – MW, MVAr
- AGC setpoints for generation resource and voltage setpoint. As well as the feedback for those setpoints.

- Total real power target

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. DERMS Workbook inputs:
   a. Seller shall provide required information for the DERMS, including:
      - SCADA keys, resource characteristics, meteorology, etc.
      - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 the test evaluation results might 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 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.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT P

FORM OF LENDER CONSENT

CONSENT AND AGREEMENT

This Consent and Agreement (this "***Consent***") is made and entered into as of _____ __, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

RECITALS

_____ ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of a wind electric energy generating facility owned by Seller and located in ____, [STATE] (the "***Wind Project***").

Seller and Buyer have entered into that certain Power Purchase Agreement, dated as of ____ (as amended, restated, supplemented or otherwise modified from time to time, the "***PPA***"), relating to the energy generated by the Wind Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the PPA (the "***Pledged PPA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged PPA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged PPA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of wind energy facilities of comparable size to the Wind Project and the ability perform all aspects of the PPA; (d) has agreed in writing to be bound by the PPA and to assume all of Seller's obligations under the PPA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged PPA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of and after the date of assignment, the Facility Development Security Amount or the Operational

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Security, as applicable, and (iii) Buyer has not terminated this PPA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged PPA (a "*Subsequent Seller*"), may be substituted for Seller under the PPA and Buyer shall recognize such Subsequent Seller as its counterparty under the PPA and, subject to all rights and remedies of Buyer under the PPA, continue to perform its obligations under the PPA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the PPA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the PPA. The transfer of the PPA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the PPA, Lender may cure such default by the deadline provided therefor in the PPA. Buyer will not terminate the PPA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the PPA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the PPA, (b) with respect to a default under Section 12.1(B)(8) or 22.21(A), (B), (C) or (E) of the Agreement, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the PPA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the PPA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (c) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the PPA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Wind Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. PPA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the PPA; provided that notwithstanding the foregoing, Buyer may terminate the PPA without Lender consent due to an uncured Event of Default under the PPA after the expiration of Lender's rights to cure under Section 4 hereof.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the PPA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the PPA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, Governmental Authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Start Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA.

8. Replacement Agreement. If the PPA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the PPA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the PPA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the PPA (other than the bankruptcy of Seller or a transfer of the Wind Project to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 18.6 (Assignment to Lenders) of the PPA).

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Lender and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the PPA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the PPA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

[BUYER]

By: _____
Name:_____
Title:_____

[LENDER]

By _____
Its _____

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the PPA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the PPA, as and when required under the PPA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the PPA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the PPA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the PPA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the PPA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the PPA. Seller shall have no rights against Buyer, under the PPA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT Q

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Power Purchase Agreement, dated as of _____ (the "***PPA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a wind energy generating facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the PPA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the PPA have been duly authorized by all necessary action on the part of Buyer, (ii) the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the PPA, Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, Governmental Authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Start Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

[BUYER]

By: _____
Name:_____
Title:_____

Palomas Wind Special Services Contract Power Purchase Agreement

PNM Exhibit GBB-3

Is contained in the following 157 pages.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Execution Version

POWER PURCHASE AGREEMENT

PALOMAS WIND FACILITY

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

PALOMAS POWER LLC

Dated as of May 28th, 2026

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

POWER PURCHASE AGREEMENT—PALOMAS WIND FACILITY 1
ARTICLE 1 Definitions and Rules of Interpretation 1
1.1 Definitions 1
1.2 Rules of Construction. 20
1.3 Interpretation with Interconnection Agreement 21
1.4 Interpretation of Arrangements for Electric Supply to the Project 21
ARTICLE 2 Term and Termination 22
2.1 Execution Date and Term 22
ARTICLE 3 Project Description 23
3.1 Commercial Terms 23
3.2 Project 23
3.3 Location 24
3.4 General Design of the Project 24
3.5 Expected Commercial Operation Date 25
3.6 Extension of Expected Commercial Operation Date 26
3.7 Delay Damages 26
3.8 Capacity Shortfall Damages. 26
3.9 Test Energy 27
3.10 Notice of Commercial Operation 27
3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. 28
3.12 Eligible Change in Tariff. 28
ARTICLE 4 AGC; Curtailment 28
4.1 AGC; Curtailment. 28
ARTICLE 5 Delivery and Metering 29
5.1 Delivery Arrangements. 29
5.2 Availability Reporting 30
5.3 Electric Metering Devices. 30
5.4 Adjustment for Inaccurate Meters 31
ARTICLE 6 Conditions Precedent 32
6.1 Conditions Precedent 32
6.2 Notice 32
ARTICLE 7 Sale and Purchase of Energy Output 32
7.1 Sale and Purchase of Energy Output 32
7.2 Title and Risk of Loss 33

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

7.3 Future Environmental Attributes 33
7.4 Scheduling. 33
7.5 Seller Forced Outages 34
7.6 Availability Guarantee 34
ARTICLE 8 Payment Calculations 34
8.1 Billing Components 34
8.2 Payment Support Requirement 34
8.3 Survival on Termination 35
ARTICLE 9 Billing and Payment Procedures 35
9.1 Statements and Payment of Electricity Payments. 35
9.2 Miscellaneous Payments 35
9.3 Currency and Method of Payment 35
9.4 Default Interest 36
9.5 Disputed Items. 36
9.6 Statement Errors 36
9.7 Taxes. 36
9.8 Setoff and Payment Adjustments 37
9.9 Netting. 38
9.10 Survival on Termination 38
ARTICLE 10 Operations and Maintenance 38
10.1 Construction of the Project. 38
10.2 Commissioning and Testing. 39
10.3 Access to and Inspection of the Project. 40
10.4 Operating Parameters. 40
10.5 Operating Procedures 41
10.6 Project Maintenance. 42
10.7 Sales to Third Parties 42
10.8 [Reserved] 42
10.9 [Reserved] 43
10.10 [Reserved]. 43
10.11 Weather Stations. 43
10.12 Monthly Operational Report. 43
10.13 [Reserved]. 43

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

ARTICLE 11 Environmental Attributes.....44
11.1 Sale of RECs and Environmental Attributes. 44
ARTICLE 12 Default and Remedies 45
12.1 Events of Default of Seller. 45
12.2 Events of Default of Buyer. 48
12.3 Damages Prior to Termination. 49
12.4 Termination. 49
12.5 Specific Performance 50
12.6 Remedies Cumulative 50
12.7 Waiver and Exclusion of Other Damages 51
12.8 Payment of Amounts Due to Buyer 51
12.9 Duty to Mitigate 51
12.10 Security Rights 51
ARTICLE 13 Contract Administration and Notices 51
13.1 Notices in Writing 51
13.2 Representative for Notices 52
13.3 Authority of Representatives 52
13.4 Records 52
13.5 Provision of Real-Time Data. 53
13.6 Examination of Records. 53
13.7 Exhibits. 53
13.8 Resolution of Issues 53
ARTICLE 14 Force Majeure 54
14.1 Definition. 54
14.2 Notification Obligations. 55
14.3 Duty to Mitigate 56
14.4 Force Majeure Event Occurring After Commercial Operation 56
ARTICLE 15 Representations, Warranties and Covenants 56
15.1 Seller's Representations, Warranties and Covenants. 56
15.2 Buyer's Representations, Warranties and Covenants 58
ARTICLE 16 Insurance 59
16.1 Evidence of Insurance. 59
16.2 Term and Modification of Insurance. 59
16.3 Endorsements and Other Requirements. 60

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

ARTICLE 17 Legal and Regulatory Compliance and Governmental Approval.....60
17.1 Applicable Laws 60
17.2 Governmental Approvals 61
17.3 NMPRC Approval 61
17.4 Compliance with Reliability Standards 62
17.5 Compliance Information 62
ARTICLE 18 Assignment and Other Transfer Restrictions.....62
18.1 No Assignment Without Consent 62
18.2 Conditions on Transfers 63
18.3 Change of Control.....63
18.4 Transfer Without Consent Is Null and Void 63
18.5 Subcontracting 63
18.6 Assignment to Lenders.....64
ARTICLE 19 Credit and Security Requirements 64
19.1 Security 64
19.2 Form of Security 65
19.3 Grant of Security Interest.....65
19.4 Use of Security.....66
ARTICLE 20 Indemnity; Insurance Proceeds 66
20.1 Indemnification.....66
20.2 Notice of Claims; Procedure.....66
20.3 Insurance Proceeds.....67
ARTICLE 21 Governmental Charges.....67
21.1 Allocation of Governmental Charges. 67
ARTICLE 22 Miscellaneous.....68
22.1 Waiver.....68
22.2 Fines and Penalties.....68
22.3 Standard of Review.....68
22.4 Certain Third Party Beneficiary Rights. 68
22.5 Relationship of the Parties.....69
22.6 Equal Employment Opportunity Compliance Certification 70
22.7 Survival of Obligations 70
22.8 Severability 70
22.9 Complete Agreement; Amendments.....70

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

22.10 Binding Effect....70
22.11 Headings....70
22.12 Counterparts....70
22.13 Governing Law....71
22.14 Confidentiality....71
22.15 Marketing Rights; Press Releases and Media Contact; Access....73
22.16 Right to Mortgage....74
22.17 Forward Contract and Master Netting Agreement....74
22.18 Accounting Matters....74
22.19 Telephone Recording....76
22.20 Anti-Corruption....76
22.21 Trade Controls....77
22.22 Market Event....78

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBITS

Exhibit A	Description of Seller's Generation Facilities, Site Map and Project Schedule
Exhibit B	One-Line Diagrams of Project and Interconnection Facilities
Exhibit C	Description of Site
Exhibit D	Notice Addresses
Exhibit E	Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
Exhibit F	Commissioning Tests
Exhibit G-1	Insurance Coverages
Exhibit G-2	Form of Attestation and Bill of Sale
Exhibit H	Availability Guarantee
Exhibit I	Form of Seller Guaranty
Exhibit J	Commercial Operation Form of Certification
Exhibit K	Reserved
Exhibit L	Annual Generation Forecast
Exhibit M	PPA Functional Mapping
Exhibit N	Interconnection Metering Standard
Exhibit O	Commissioning and Testing Process
Exhibit P	Form of Lender Consent
Exhibit Q	Form of Estoppel Certificate

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

POWER PURCHASE AGREEMENT—**PALOMAS WIND FACILITY**

This Power Purchase Agreement – Palomas Wind Facility, as may be amended from time to time, is entered into this 28th Day of May, 2026 ("**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 Palomas Power LLC ("**Seller**"), whose principal place of business is 1088 Sansome Street, San Francisco, CA 94111. Buyer and Seller may be referred to in this PPA individually as a "**Party**" and collectively as the "Parties."

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

WHEREAS, Seller desires to develop, design, construct, own and operate a wind energy electric generating facility with an expected total maximum power output of approximately four hundred (400) MW ("**Project**"), as further defined herein and in Exhibit A; and

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

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

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

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

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

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

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

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

"**Applicable Law**" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

of any of the foregoing by a Governmental Authority having jurisdiction over this PPA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

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

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

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

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

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

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

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

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

"**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 direct or indirect equity or voting interests in Seller (without regard to unforeclosed-upon pledges to Seller's Lender's or interests held by any Tax Equity Investors in connection with a Tax Equity Financing); provided that a Change of Control will exclude any Seller Permitted Transfer.

"**Commercial Operation**" means that the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) Wind Turbines with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) Seller has obtained all Seller required permits, required consents and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law and all such permits, consents and Governmental Approvals are in full force and effect, (c) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Energy to the Point of Delivery in an amount at least equivalent to the Guaranteed Capacity and is not in material breach of its Interconnection Agreement, (d) Seller has satisfactorily completed all of the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures, (e) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement, (f) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G-1 of this PPA, and (g) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

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

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

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

"**Commissioning 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.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

"**Compensable Curtailment**" means any curtailment of the Project, that is not a Seller Curtailment to the extent such curtailment during a calendar year has exceeded 82,000 MWh for each calendar year; *provided*, that for any period the Project is operating for less than a full calendar year, 82,000 MWh shall be pro-rated for the applicable portion of the calendar year in which the Project is operating within such calendar year and the determination of any Compensable Curtailment shall be based on such pro-rated amount.

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

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

"**Creditworthy**" or "**Creditworthiness**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa3" or higher by Moody's, (b) "BBB-" or higher by S&P, and (c) "BBB-" or higher by Fitch.

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

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

"**DC**" means direct current.

"**Deemed Energy**" means the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Compensable Curtailment. Deemed Energy (MWh) shall be calculated using (i) the Wind Turbine manufacturer's power curve as provided in the Wind Turbine supply agreement, and (ii) wind data (wind speed, ambient temperature, barometric pressure, air density) determined by the computer monitoring system for each Wind Turbine that is part of the Project adjusted to account for electrical losses in delivering Energy to the Point of Delivery. The calculation of Deemed Energy will consider all or a portion of the Wind Turbines taken out of service due to the curtailment but excluding any Wind Turbines taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery.

The Parties agree that Deemed Energy shall be calculated for each interval in which

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

curtailment occurs, defined as when

(a) the Actual Output ("AO") (i) is decreasing towards the Setpoint ("SP") at a rate greater than or equal to 10 MW per minute, or (ii) is at or below the Setpoint; and

(b) the Setpoint is less than both the Nameplate capacity and the Potential Power ("PP") output.

For each such interval, Deemed Energy shall be calculated as the difference between Potential Power and the greater of Actual Output or SP, converted to MWh. Any calculated values that are less than zero shall be excluded from the final Deemed Energy amount, such that Deemed Energy shall not be negative. This methodology ensures that only energy curtailed as a direct result of the curtailment instruction is included and that reductions in output attributable to other causes are not counted as Deemed Energy.

$$Deemed\ Energy\ (MWh) = MAX\left(\frac{PP - MAX(AO, SP)}{12}, 0\right)$$

Where:

- PP represents the modeled available power based on meteorological data;
- AO represents measured unit output;
- SP represents the applicable Setpoint; and
- Division by 12 converts five-minute intervals to MWh.

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

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

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

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

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

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

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

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

"**Downgrade Event**" is when a Person fails to maintain Creditworthiness.

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

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

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

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission System as set forth in Appendix A of the Interconnection Agreement.

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

"**Eligible Change in Tariff**" means any 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 Project.

"**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.

"**Energy Output**" means Metered Output, Environmental Attributes (including but not limited to RECs) and Ancillary Services generated by the Project.

"**Energy Output Payment Rate**" is defined in Section 3.1.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

a Buyer Event of Default as set forth in Section 12.2.

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

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

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

"**Fitch**" means Fitch Ratings Inc and any successor thereto.

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

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on 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.

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

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

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

"**Governmental Charges**" means any Taxes, charges or costs that are assessed or

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

levied by any Governmental Authority or other Person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of Energy Output contemplated by this PPA, either directly or indirectly.

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

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

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

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

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

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

"**Interconnection Agreement**" means, collectively or individually as the context may require, the separate agreements between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreements may be amended, amended and restated, modified, replaced or otherwise supplemented 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 (or an analogous term, to the extent the Interconnection Agreement is amended or replaced).

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

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

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

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

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

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

"**Mid-State Agreement**" means the Development and Construction Agreement contemplated in that certain Term Sheet between Public Service Company of New Mexico, acting in its transmission function, and Mid-State Transmission LLC, dated on or around the date hereof.

"**Mid-State Approvals**" means, collectively, a Location Approval, Right Of Way Width Determination, and Certificate of Convenience and Necessity issued by NMPRC for the Mid-State Transmission Line.

"**Mid-State Transmission Line**" means a new 345 kV transmission line from Western Spirit 345 kV Station to Hidden Mountain 345 kV Station.

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

"**Monthly Billing Period**" means each Month during the Term in which Energy Output has been generated by Seller for Buyer and delivered to the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

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

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

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

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

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

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

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

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

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

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

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

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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

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

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

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

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

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

"**Period Hours**" has the meaning set forth in Exhibit H.

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

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

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

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

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

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

"**Project**" means Seller's wind energy generation facility with a capacity of four hundred (400) MW at the Point of Delivery located in Torrance County, New Mexico which will produce the Energy Output made available to Buyer under this PPA, including one or more of Seller's Wind Turbines and Seller's Interconnection Facilities, as identified and described in

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

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

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

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

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

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

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

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

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

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating at least five hundred (500) MW, in the aggregate, of wind generation and that is trained on the functionality and operation of wind generation technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) Creditworthiness, and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility), or (b) is reasonably acceptable to Buyer and Retail Customer.

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

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

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

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Renewable Energy Certificate**" or "**REC**" means a WREGIS Certificate as defined by the WREGIS Operating Rules and all Environmental Attributes associated with the generated energy. Seller must deliver RECs that are compliant with the requirements of the New Mexico Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended.

"**Replacement Energy Costs**" means the costs to Buyer reasonable and necessary to replace Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein and based upon similar terms, conditions and performance standards outlined in

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

this PPA) which Seller, in accordance with this PPA, was obligated to deliver to Buyer but failed to provide pursuant to this PPA. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs) and Ancillary Services delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Energy Output to the Point of Delivery and any associated transmission or distribution costs, (b) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Energy Output, and (c) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this PPA.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"Retail Customer" has the meaning set forth in the Recitals.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community or, His Majesty's Treasury or any, and each other sanctions authority which has jurisdiction in respect of any Party or the Project.

"**SCADA**" means the Project's remote supervisory control and data acquisition system, which includes all necessary components and contact points at the Project.

"**Scheduled Maintenance Outage**" means a time during which any portion of the Installed Capacity is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"Scope Reporting Rule" means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 Code of Federal Regulations § 229.1500, et seq., and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Buyer or Retail Customer voluntarily elects in its sole discretion to comply therewith, as set forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

"**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 Curtailment**" means any time the Project is unable to deliver Energy to the Point of Delivery. It shall not be a Seller Curtailment due to actions of the Transmission Provider or if the Buyer is unable to receive otherwise available Energy at the Point of Delivery.

"**Seller Excused Hours**" means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Compensable Curtailment, (b) a Force Majeure Event, (c) any failure by Buyer to perform a material obligation under this PPA (other than due to a breach by Seller of its obligations under this PPA), or (d) weather conditions that exceed equipment manufacturer's specifications. Seller Excused Hours includes any curtailment that is not considered a Seller Curtailment.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Project to the Point of Delivery not associated with Seller Excused Hours.

"**Seller Guarantor**" means a Person that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Parties**" means: (a) Seller's Affiliates; (b) owners, directors, officers and employees of Seller or Seller Affiliates; and (c) representatives, agents, and subcontractors of Seller and/or Seller Affiliates, in each case, providing services on behalf of, or engaged by, Seller or Seller Affiliates in connection with this PPA and any activity contemplated hereunder or thereunder (and a "Seller Party" is any one of the foregoing).

"**Seller Permitted Transfer**" means any of the following: (a) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Ultimate Parent retains the ability to control the management and policies of Seller; (b) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction or (iii) a direct or indirect transfer to an entity of 50% or more of the shares of, or equity interests in, Seller so long as Seller remains Controlled by Seller's Ultimate Parent; *provided*, that in the case of (b), (A) the transferee is a Qualified Transferee, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to any Seller's Lender and any subsequent assignee, designee or transferee thereof; provided that in the case of (c), (A) the Seller's Lender or its applicable assignee, designee or transferee is a

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Qualified Transferee and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements.

"**Seller Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Buyer to Seller, less any amounts owed from Seller to Buyer, plus (b) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Energy Output) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; provided that if (b)(i) is less than (b)(ii), then zero, plus (c) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or in entering into new arrangements which replace this PPA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this PPA.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this PPA.

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this PPA. This PPA is Site specific, and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval. Adding or subtracting contiguous parcels of property or modifying the layout of turbines or strings within the Site will not be deemed a relocation requiring Buyer consent.

"Special Service Contract" has the meaning set forth in the Recitals.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of generating units, including the Wind Turbines.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits and any other tax credits that are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority.

"**Term**" means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Energy**" means any and all Energy Output generated by the Project and delivered to Buyer during the Test Period.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date; provided, however, in no event shall the Test Period be longer than one hundred and twenty (120) Days.

"**Trade Control**" means any of the following: Sanctions, applicable export and import controls and U.S. antiboycott law, excluding any blocking rules or other countermeasures which are administered or enforced by any Governmental Authority, other than a Governmental Authority of the United States, the United Kingdom, the European Union, or the United Nations.

"**Transmission Provider**" means the Person, designated agent, or third party acting in its transmission function capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means Pattern Energy Group LP.

"**Weather Stations**" has the meaning set forth in Section 10.11(A).

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

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**Wind Turbine**" means a single wind turbine generating system, including the nacelle, rotor, tower, pad, and controller system, installed as part of the Project.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

"**WREGIS Qualified Reporting Entity**" as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS Certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules and WREGIS Terms of Use.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits" or "Schedules" shall be to articles, sections, exhibits, or schedules of this PPA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this PPA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this PPA, the terms of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) All uses of the word "shall" in this PPA are to be interpreted as imperative and not permissive.

(H) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this PPA as a whole.

(I) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(J) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or."

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this PPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power to the Project for any purpose ("House Energy"). Seller shall contract with the local utility in whose retail service territory the Project is located

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter Energy generated and delivered by the Project in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this PPA are not binding upon the Local Provider. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this PPA, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and for House Energy, backfeed power and station service power or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy, backfeed power and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term.

(A) This PPA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Standard Time on the date that is the last Day of the twentieth (20th) Commercial Operation Year (the "**Term**"), subject to the early termination provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

(B) If (i) Transmission Provider has not filed for the Mid-State Approvals with the NMPRC by October 31, 2026, (ii) Transmission Provider has not delivered the "Development Completion Acknowledgement" for the Mid-State Transmission Line under the Mid-State Agreement by March 31, 2028, or (iii) the Mid-State Agreement has otherwise been terminated

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

prior to March 31, 2028, then Buyer or Seller may within 30 days of such date terminate this PPA without payment or penalty owed by either Party and Buyer shall return the Development Security.

(C) If Seller or its affiliate has not received Determinations of No Hazard from the Federal Aviation Administration (or equivalent documentation to construction in airspace) for all of the Wind Turbines comprising the Project on or prior to June 30, 2027, unless the Parties mutually agree that such Determinations of No Hazard are reasonably likely to be received by September 30, 2027, then Buyer or Seller, for the 30 days following June 30, 2027, may terminate this PPA and in the event of such a termination Buyer shall return the Development Security.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this PPA, as each term is more fully set forth in this PPA:

COMMERCIAL TERMS

<table>
<tr><td>Buyer: Public Service Company of New Mexico</td><td>Seller: Palomas Power LLC</td></tr>
<tr><td colspan="2">Project: Palomas Power LLC</td></tr>
<tr><td colspan="2">Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer and delivers to Buyer the Energy Output being provided under this PPA, as further specified in the definition of “Point of Delivery”.</td></tr>
<tr><td>Delivery Term: Twenty (20) Commercial Operation Years</td><td>Guaranteed Capacity (MWs): 400 MW at the Point of Delivery</td></tr>
<tr><td>Product Type: Bundled Energy, Ancillary Services, RECs, and Environmental Attributes</td><td>Energy Output Payment Rate: $64.55/MWh, as further specified in Section 8.1(A).</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: September 30, 2029</td></tr>
</table>

3.2 Project.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(A) Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

(B) Exhibit L identifies the expected first year total annual Energy to be delivered from the Project to the Point of Delivery and the corresponding capacity factor. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Wind Turbines at the Site. Seller will provide notice to Buyer of the final proposed location of the Wind Turbines and Interconnection Facilities at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer, and taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the terms of this PPA and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Section 3.4(A) through Section 3.4(H), and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N Interconnection Metering Standard from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) deliver Energy to Buyer, at the frequency specified by Buyer;

(F) be capable of both full load and idle operation over an ambient temperature range of -30ºC to 45ºC with the full range of relative humidity or as otherwise set forth in the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

manufacturer's specifications;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of immediate disconnection remotely by the System Control Center;

The Project shall meet or exceed the recommended performance specifications of this Section 3.4(I) through Section 3.4(K), and as appropriately defined in IEEE Standard 2800-2022 Section 5, Section 6 and Section 7 at the Point of Delivery at all times;

(I) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Section 5 at the Point of Delivery;

(J) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Section 7 at the Point of Delivery, which shall be Category II minimum;

(K) 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

(L) No later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the Project. These controls shall include the following MESA-ESS modes or equivalent: (i) Active Power Smoothing, (ii) Automatic Generation Control, and (iii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Section 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this PPA, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis (a) up to a maximum of one hundred fifty (150) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event (together with a reasonable period for the affected Party to cure the Force Majeure Event as contemplated in Section 14.2) that delays construction or commencement of operation of the Project, (b) 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 (or otherwise in accordance with the Interconnection Agreement), or (c) other than in connection with or arising out of or relating to any Force Majeure Events or the interconnection of the Project, (i) if Seller notifies Buyer that Seller requires a performance from Buyer of Buyer's obligations under Exhibit F or Exhibit O, and (ii) Buyer does not timely perform such obligations, then on a day-for-day basis without an aggregate cap for the time period for the days of delay beyond Buyer's failure to perform in a timely manner to the extent such failure by Buyer to perform 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 the Expected Commercial Operation Date is extended pursuant to clause (a) or (b) of this Section for the maximum extension period set forth in the applicable clause, then Buyer will have the right to terminate this agreement without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Capacity and the Installed Capacity as of the determination date. The Delay Damages and, if applicable, Buyer Termination Payment subject to the limitations set forth in Section 12.3(B), are the Buyer's sole and exclusive monetary remedies, and Seller's sole and exclusive monetary liabilities, for Buyer's damages due to any delays in achieving, or failure to achieve, the Expected Commercial Operation Date.

3.8 Capacity Shortfall Damages. If the Commercial Operation Date is declared before the full Guaranteed Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Six Hundred Thousand Dollars ($600,000) per MW of Delayed Capacity (as of the Guaranteed Start Date) ("**Capacity Shortfall Damages**") as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed Capacity, in which case the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Guaranteed Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Energy. Seller shall, no later than forty-five (45) Days prior to the beginning of the Test Period, give written notice to Buyer of its NERC-registered Generator Owner and Generator Operator and designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Test Energy to Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of the Test Period.

(A) Seller shall retain Public Service Company of New Mexico as its WREGIS Qualified Reporting Entity to report to WREGIS under the WREGIS Operating Rules, unless agreed to otherwise by Buyer and Retail Customer. Seller shall document and provide information required for the Qualified Reporting Entity to record RECs with WREGIS for the Test Energy generated prior to the Commercial Operation Date, including but not limited to production data and REC vintage. To the extent that Seller does not provide the necessary information or WREGIS does not provide WREGIS Certificates for the Test Energy, Seller shall (a) provide the RECs for a quantity of Energy equivalent to the quantity of such Test Energy or (b) reimburse Buyer for Buyer's reasonable and documented costs to replace RECs for a quantity of Energy equivalent to the quantity of such Test Energy.

3.10 Notice of Commercial Operation. Not less than sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than one hundred and twenty (120) 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, and all the requirements of Commercial Operations have been met, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) Business Days after the date set forth in the Commercial Operation Notice. If Seller should

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this PPA is not prohibited by Applicable Law. Any breach of this Section 3.11 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.12 Eligible Change in Tariff. To the extent an Eligible Change in Tariff occurs between the Execution Date and one year after NMPRC Approval that requires Seller to take additional actions to comply with Seller's obligations under this PPA and the costs associated with such actions, if they had been reasonably contemplated as of the Execution Date, increase Seller's costs by more than one and a half percent (1.5%) of the Contract Value at Contract execution, 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; Curtailment

4.1 AGC; Curtailment.

(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 capable of controlling each Wind Turbine. Beginning on the Commercial Operation Date and in response to directives from the System Control Center, Seller shall curtail the Project by use of the AGC system to effect Buyer's curtailment rights pursuant to this Section 4.1. 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.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to curtail the Project by use of the AGC system to effect a curtailment pursuant to this Section 4.1(B). Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

control during normal operations. If the Project's AGC set-point control is switched to Local status, Seller shall notify Buyer as soon as possible, detailing the rationale behind the change of status. Buyer maintains the right to enforce any curtailment as required for the protection of Buyer's systems. Such curtailment rights do not provide the Buyer with any rights to direct the operation of the Project. For a Compensable Curtailment only, Buyer shall pay Seller an amount equal to the sum of the Energy Output Payment Rate multiplied by the Deemed Energy associated with the number of Compensable Curtailment MWh. Buyer shall have the right to review and approve Seller's calculations and data utilized to develop the calculations of Deemed Energy. Deemed Energy results shall be trued up to correct for consistently biased calculation error based on assessment of normal operations periods before and after any given curtailment event.

(C) Seller shall reduce Energy Output from the Project during and to the extent of any curtailment.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Seller shall be responsible for the costs of interconnection and costs required to deliver the Energy from the Project to Buyer at the Point of Delivery at the required voltage and frequency, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to the Project's output up to the Point of Delivery.

(B) [Reserved].

(C) On a Day-ahead basis, and no later than 4:00 a.m. MST, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer at the Point of Delivery. Each Friday, and no later than 12:00 noon MST, Seller shall provide Buyer a weekly Project generation forecast for the following week based on equipment availability. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond, including as necessary under participation in any regional market, including the EIM or the EDAM, if any.

(E) Seller shall provide to Buyer a one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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.

(F) Seller shall be responsible for separately sourcing, metering and payment for an electrical power supply and associated power consumption for the Project House Energy.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices, including Primary Metering Devices and redundant metering ("**Back-Up Metering**") with independent current transformers ("**CTs**") and potential transformers ("**PTs**"), are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be purchased and installed, in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. 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 power and Energy, if supplied by the generation system. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided* that the Parties may revise this loss adjustment based on actual experience. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Transmission

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, secondary, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A) and the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices or Secondary Metering are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device or Secondary Metering fails to register, or if the measurement made by an Electric Metering Device or Secondary Metering is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall first use Back-up Metering, followed by Secondary Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that such Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery, 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

ARTICLE 6
Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this PPA are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

(B) [RESERVED].

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; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this PPA.

ARTICLE 7
Sale and Purchase of Energy Output

7.1 Sale and Purchase of Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Energy Output delivered by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase Energy Output from the Project when and to the extent that (a) a Party's performance is excused by a Force Majeure Event, (b) a Compensable Curtailment is continuing, (c) a Seller Forced Outage is continuing, or (d) a Scheduled Maintenance Outage is continuing. Furthermore, and without limiting Section 10.7, Buyer shall not be required to receive or purchase Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Capacity as adjusted for losses to the Point of Delivery. In no event shall Seller have the right to procure any element of the Energy Output from sources other than the Project for sale or delivery to Buyer under this PPA.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Energy from the Project up to delivery and receipt at the Point of Delivery, and Buyer shall be deemed to be in control of such Energy from the Project from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy from the Project shall transfer from Seller to Buyer at the Point of Delivery. Title related to any Environmental Attributes and Future Environmental Attributes shall transfer from Seller to Buyer upon generating of the Energy from the Project.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such Future Environmental Attributes is included in the Energy Output Payment Rate as Energy Output and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any Future Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this PPA such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements and any other applicable guidelines. Buyer shall control scheduling of Metered Output. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Energy Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall provide Buyer with a good faith estimate of the hourly quantities of Energy Output that Seller expects to generate in the following Commercial Operation Year ("**Projected Schedule**"). Seller shall also provide estimates of the daily quantity of Energy to be delivered to Buyer. Seller shall configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than ten (10) MW per minute. Buyer is not required to provide this Project as a participating resource in a regional market.

(B) [RESERVED]

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week. Unless

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly quantities of Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(D) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Seller Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

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

ARTICLE 8
Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to (i) the sum of (a) the aggregate amount of Energy Output (MWh) delivered to Buyer at the Point of Delivery from the Project, plus (b) the Deemed Energy resulting from Compensable Curtailment, multiplied by (ii) the Energy Output Payment Rate. The **Energy Output Payment Rate** is the sole payment from Buyer to Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Energy Output Payment Rate includes all Taxes.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this PPA consistent with Applicable Law.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, Monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail, including an Attestation and Bill of Sale verifying the associated RECs and Environmental Attributes, if applicable, in the form of Exhibit G-2 ("**Attestation and Bill of Sale**").

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this PPA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Buyer under this PPA shall be made in Dollars in immediately available cleared funds by wire transfer or electronic funds transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the lower of (i) the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) and (ii) the maximum interest rate allowed by Applicable Law ("**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. A Party must notify the other Party of any error within three hundred sixty-five (365) Days of such error.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this PPA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Gross Receipts

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Tax is applicable to the sale or delivery of Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Energy Output and on Buyer's payment and Seller's receipt of amounts due under this PPA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Energy Output to Buyer pursuant to this PPA.

(B) Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this PPA and implement the provisions in this PPA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this PPA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this PPA, including Section 9.9 below, all payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this PPA, including damages and other payments that are owed by a Party to the other Party pursuant to this PPA. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this PPA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this PPA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, Applicable Law and this PPA. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer Monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key Project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent Monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-13-16 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 Day 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 62-13-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not modify, alter, or otherwise change the Project without the prior written consent of Buyer after consultation with Retail Customer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this Agreement with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day-for-day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and ten (10) Days prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this PPA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this PPA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five-minute and real-time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Energy Output delivered by Seller will meet all requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. Seller shall provide Buyer with all real time measurement parameters of the Project including individual Wind Turbine 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, Section 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 standards 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 or applicable NERC maintenance interval. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day's written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than thirty (30) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "Operating Procedures"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity and Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this PPA, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this PPA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than November 15 for the following calendar year. Should Buyer desire to change the reporting dates noted above, the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's generation, including the duration of such event. Each Scheduled Maintenance Outage will be subject to approval by Buyer, not to be unreasonably withheld. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Project's generation for any reason at any time during May 1st through September 30th (except if such interruption or reduction would not cause the Project's capacity to fall below the Guaranteed Capacity), without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Metered Output to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Seller shall not sell or divert Energy Output to any Person other than Buyer.

10.8 [Reserved].

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

10.9 [Reserved].

10.10 [Reserved].

10.11 Weather Stations.

(A) Seller shall, at Seller's cost and no later than the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations (**"Weather Stations"**) at the Project Site to monitor and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by Seller's engineer and agreed to by Buyer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall be of a grade equivalent to or better than those used in large-scale utility wind facility installations and include the capability for measuring, indicating, and recording ambient temperature, barometric pressure, wind speed and direction (instantaneous and average), and relative humidity. Seller shall submit to Buyer for review and approval, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all Wind Turbines and other prominent features, as applicable. The Weather Stations shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to be maintained by Seller and to provide an unrestricted, real-time indication of all measured parameters to Buyer, and the data shall be available to Buyer via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted (subject to Seller's software licenses) real-time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations. Data collected from the Weather Stations shall be utilized for determination of the performance ratio, system availability, and lost output due to curtailment or outages.

10.12 Monthly Operational Report. Not later than the fifteenth (15th) Day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; meteorological data; 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. If any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.13 [Reserved].

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

ARTICLE 11
Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer within ten (10) Days of the RECs being created in WREGIS and available for transfer. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within ten (10) Days after written notice from Buyer of such failure, and such failure is due to Seller's fault or negligence. The RECs and Environmental Attributes transferred under this PPA are bundled with the associated Energy.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Buyer may, to the extent permitted by Applicable Law and this PPA, assign its rights, title and interest in and to any RECs and Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Seller shall, at its sole expense and prior to the commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the creation and tracking all Renewable Energy Certificates associated with all Metered Output, including Test Energy. Such actions shall include installing a meter on the low side of Seller's step-up transformer and ensuring that all corresponding WREGIS Certificates are issued, tracked, and transferred to Buyer in a timely manner. The Parties acknowledge that Seller's registration of the Project with WREGIS requires achievement of the Commercial Operation Date. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account. Buyer shall have the exclusive right to transfer RECs and Environmental Attributes to Retail Customer's WREGIS account, or retain the RECs and Environmental Attributes in Buyer's WREGIS account and retire the RECs and Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(E) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(F) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, which shall be Public Service Company of New Mexico, unless agreed to otherwise by Buyer and Retail Customer.

(G) Seller shall not report in any public communication, or under any program, that any of the Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer or Retail Customer. Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Environmental Attributes for Buyer to own, hold and manage in Buyer's or Retail Customer's own name and account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Environmental Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Environmental Attributes, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy, and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. To the extent that any such public communication is allowed under Section 13.1, in any public communication concerning the Project, Project Energy or the Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Project Energy.

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;

(4) Except with respect to Energy Output during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Energy Output, RECs or Ancillary Services committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this PPA or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this PPA, or other date mutually agreed to by the Parties in writing;

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA on more than three occasions in any rolling thirty-six consecutive month period;

(8) The Project fails, after the third anniversary of the Commercial Operation Date, to maintain an Actual Availability Percentage of at least eighty percent (80%) over two (2) successive Commercial Operation Years; provided, however, for a single occurrence during the Term of this Agreement for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Actual Availability Percentage calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(8);

(9) The Project fails to obtain an Actual Availability Percentage of at least fifty-five percent (55%) over any Commercial Operation Year; provided, however, for a single occurrence during the Term of this PPA for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Actual Availability Percentage calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(9); or

(10) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The failure of Seller to make any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

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

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) Seller's failure to make any payment due to Buyer under or in connection with this PPA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this PPA), unless remedied within thirty (30) Days of receipt by Seller of written notice of such failure from Buyer;

(6) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice;

(7) Seller's failure to deliver RECs in accordance with the terms of this PPA, unless remedied within five (5) Business Days of receipt of notice of such failure; or

(8) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to deliver Energy Output to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including the Interconnection Agreement) required to deliver Energy to the Point of Delivery;

(3) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this PPA;

(4) Seller's failure to maintain in effect any agreements required to deliver Energy Output to the Point of Delivery;

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

(6) Seller fails to register the Project within WREGIS or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this PPA.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this PPA, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise; or

(4) Buyer's assignment of this PPA except as permitted in accordance with Article 18.

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Buyer to cure within thirty (30) Days of written notice from Seller to Buyer.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period; or

(2) Any representation or warranty made by Buyer in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this PPA from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security, and (v) exercise its rights to terminate this PPA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party. 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.

(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.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material performance obligation of the other Party under this PPA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss. The Parties agree that the Termination Payment does not represent such waived consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this PPA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this PPA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 13
Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this PPA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this PPA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this PPA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this PPA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) monthly construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Energy Output from, the Project in accordance with this PPA, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this PPA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals 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 Wind Turbines.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, Exhibit C, 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

to attempt to resolve disputes that arise under this PPA in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. If 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. If 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**" means an event or circumstance that arises, after the Execution Date, that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this PPA is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 Energy Output of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of two hundred seventy (270) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this PPA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. If any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that Seller notifies Buyer of a Force Majeure Event that affects the ability of Seller to deliver Energy Output from the Project to the Point of Delivery, then any lost production (MWh) during the continuance of such Force Majeure Event shall be a Seller Curtailment.

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) Subject to Section 2.1(C), to the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have upon the generation of Energy Output, good and marketable title to the RECs, Environmental Attributes, and Future Environmental Attributes.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

(L) All right, title and interest in and to the RECs, Environmental Attributes and Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this PPA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(P) [Reserved]. and

(Q) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

ARTICLE 16
Insurance

16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter within thirty (30) Days of the annual insurance policy renewal or update or change of the insurance policy, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G-1 and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the Term of this PPA on an "occurrence" basis. If 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,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G-1 within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this PPA, to request Seller to modify the insurance minimum limits specified in Exhibit G-1 in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this PPA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G-1 names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G-1 shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

ARTICLE 17
Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the PPA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this PPA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of NMPRC Approval in connection with (i) the execution and performance of this PPA; and (ii) any waivers as set forth in Buyer's request for approval of this PPA (collectively, "**Requested Actions**"). An NMPRC order that defers action on cost recovery to a future case shall not be a material adverse financial order. In particular:

(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 with no material adverse financial determination, which final written order is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, *provided* that each of Seller, Retail Customer, and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this PPA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This PPA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if neither Buyer nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made by Buyer or Retail Customer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this PPA should remain in effect. Upon automatic termination, this PPA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

substantial modification of this PPA. If the Parties and Retail Customer are unable to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties and Retail Customer conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by December 31, 2026 ("**Regulatory End Date**"), then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

ARTICLE 18
Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; (ii) a Seller Permitted Transfer; or (iii) any assignment or transfer of this PPA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA.

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, or consolidation of Buyer or its parent corporation, *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 such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this PPA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this PPA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this PPA with the Affiliate as if such Person had been named under this PPA; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this PPA made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico and licensed in accordance with New Mexico law shall be

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders

(A) Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this PPA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this PPA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this PPA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this PPA to Seller's Lenders pursuant to this Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this Agreement.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed Capacity, (the "**Development Security**"), the first Fifty Thousand Dollars ($50,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Fifty Thousand Dollars ($50,000) per MW of which will be posted no later than two (2) years prior to the Expected Commercial Operation Date. 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 and provided the Delivery Term Security. If no amounts are due and owing under this PPA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) Day after termination of this PPA in accordance with its terms.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination; provided that combining forms of Security shall be subject to the discretion of Buyer:

(a) cash, (b) a Letter of Credit in form acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) Days before expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or ten (10) Business Days if the only event is that the credit rating of the issuer bank of a Letter of Credit has fallen below the Issuer Minimum Requirements) (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this PPA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 the Development Security or Delivery Term Security, as applicable to recover any amounts owing to it arising out of this PPA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this PPA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this PPA, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this PPA.

ARTICLE 20
Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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. If 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 to the applicable Governmental Authority all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Energy Output that are imposed on the making available of Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid to the applicable Governmental Authority all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Energy Output that are imposed at and from the taking of Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22
Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Certain Third Party Beneficiary Rights.

(A) In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly permitted in this PPA in Section 22.4(B), nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this PPA, Retail Customer is an express third party beneficiary to this PPA. The provisions of this PPA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as an express third party beneficiary hereof as if it were a Party hereto. In addition, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer a copy of any notice of a change in the location of the Site provided to Buyer under Section 3.3;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project; and

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the PPA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the PPA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned or delayed.

provided, that the rights granted to the Retail Customer pursuant to this Section 22.4(B) shall expire, terminate and be of no further force and effect upon the expiration or termination of the Special Service Contract, regardless of the cause. Any termination or expiration of the Special Service Contract shall not otherwise affect the rights and obligations of the Buyer and Seller as set forth in this PPA.

(C) Buyer shall provide prompt notice (and in any case within five (5) Days) to Seller of any termination of the Special Service Contract.

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this PPA, this PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned, or delayed, and *provided further,* the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

22.12 Counterparts. This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this PPA shall be brought in the United States District Court for the District of New Mexico; the Parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS PPA. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED**.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "Disclosing Party" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, investors or prospective purchasers of the Project, technical advisors, contractors, consultants, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic), and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this PPA, the Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or Receiving Party's Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this PPA that relates solely to this PPA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this PPA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall, prior to disclosure, inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall immediately notify Buyer of any security incident involving a

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("Data Breach") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per Day, seven (7) Days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

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

(A) Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this PPA and the Environmental Attributes that are to be generated under this PPA and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this PPA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this PPA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Seller will provide Buyer and Retail Customer with reasonable access to the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Project, including building(s) (if any), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this PPA constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the PPA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the 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 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within sixty (60) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

(F) Seller shall provide Buyer all such information as Buyer shall reasonably request for Buyer or Retail Customer compliance with the Scope Reporting Rule.

22.19 Telephone Recording. Each Party to this PPA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this PPA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. If a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this Agreement in accordance with Section 12.4. In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any actual, potential, threatened, or requested breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Governmental Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. Seller will ensure that the contractors and subcontractors it retains in connection with this PPA expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Agreement is terminated pursuant to an Event of Default under Section 12.1(B), Buyer shall have no obligation to make further payments hereunder following termination of this Agreement other than all payments due to Seller during the Term of this Agreement as of such termination date.

22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party to be responsible for, exporting and importing any equipment or property Seller or Seller Parties require to perform the services under this Agreement, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority.

(B) In no instance may Seller or Seller Parties list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List, or (ii) originated, offloaded or transferred to a different ship or carried in any Sanctioned Territory.

(D) The Seller shall provide to Buyer all Trade Control related documentation as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with) or respond to inquiries from any Government Authority in relation to, Trade Controls.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not (directly or indirectly) engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure that the Seller Parties it retains in connection with the performance of its obligations under this Agreement expressly agree in writing to the trade controls undertakings, representations, and warranties substantially similar to the provisions in this Section 22.21.

(H) Notice. If (a) Seller becomes aware that any breach of the terms of this Section 22.21 has occurred, is likely to occur, or (b) Seller or any Seller Party has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days of obtaining knowledge thereof.

(I) Excusal and Release. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal or not reasonably practicable under Sanctions.

(J) Subject to Section 12.1(B)(8), Buyer may terminate this Agreement, within five (5) days and without further liability, upon written notice to the Seller, if the Seller has breached this Section 22.21 (A), (B), (C), or (E) in which case, the Buyer shall have no obligation to make further payments following termination of this Agreement; provided that to the extent permitted by Sanctions, Buyer has made all payments due to Seller during the Term of this Agreement as of the termination date

22.22 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, Retail Customer's load or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this PPA, the Parties and Retail Customer shall negotiate in good faith to amend this PPA to resolve such changes in order to effect performance of this PPA, at the least possible cost to the Parties and Retail Customer, consistent with this PPA, including Section 7.4(A). To the extent that the Parties are unable to do so, either Party may initiate the process set forth in Section 13.8.

[Signature page(s) follow]

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

IN WITNESS WHEREOF, the Parties have caused this PPA to be duly executed as of the date first above written. This PPA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

DocuSigned by:

By Laurie Williams
B87ED845D25E4D9...

Name Laurie A. Williams

Title Senior Vice President

PALOMAS POWER LLC

DocuSigned by:

By
00212837E5444A3...

Name Amy Smolen

Title Vice President

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT A
DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE

1. Name of Seller's Project: Palomas Power LLC

2. Location: San Miguel and Torrance Counties, New Mexico

3. Owner (if different from Seller): N/A

4. Operator: Seller or Seller's Affiliate

5. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Wind

   b. Total number of units at the Project: at least 89

   c. Total nameplate capacity: at least 400 MW

   d. Additional technology-specific information: N / A

   e. Project includes: at least eighty-nine (89) 4.5MW wind turbines with 163 meter rotors atop 104 meter towers.

6. Project Schedule:

Key Milestone	Date
Interconnection Agreement Execution (650 MW)	10/30/2026
Major Equipment Supply Agreements Executed	12/31/2027
Discretionary Permits	3/31/2028
Close Financing	3/31/2028
30% Design Complete	1/31/2028
Start of Project Construction	3/31/2028
First Major Equipment Delivered to Site	9/30/2028
Interconnection In-Service Date	11/30/2028
Commissioning Start Date	4/1/2029

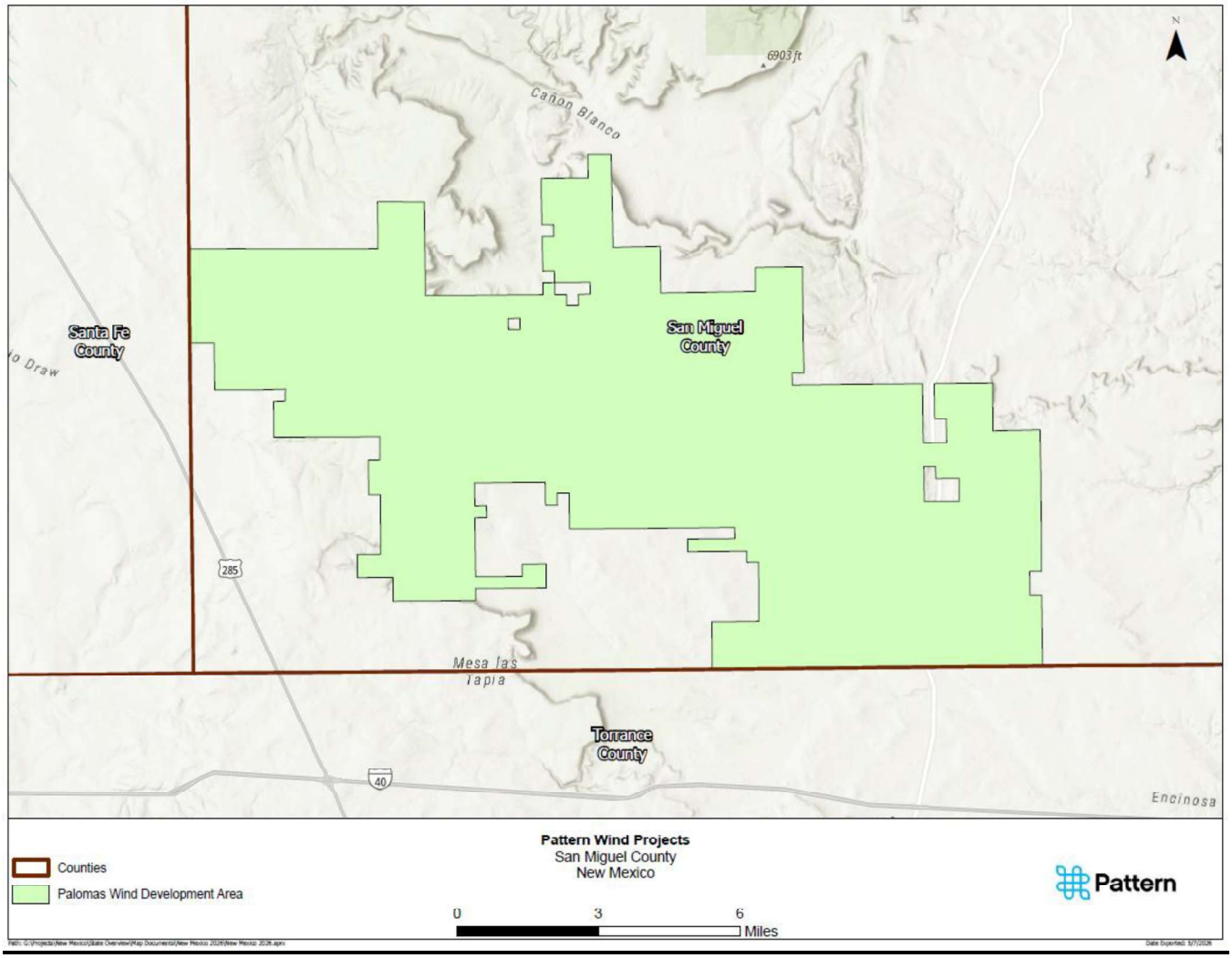
Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Expected Commercial Operation	9/30/2029
Guaranteed Start Date	2/28/2030

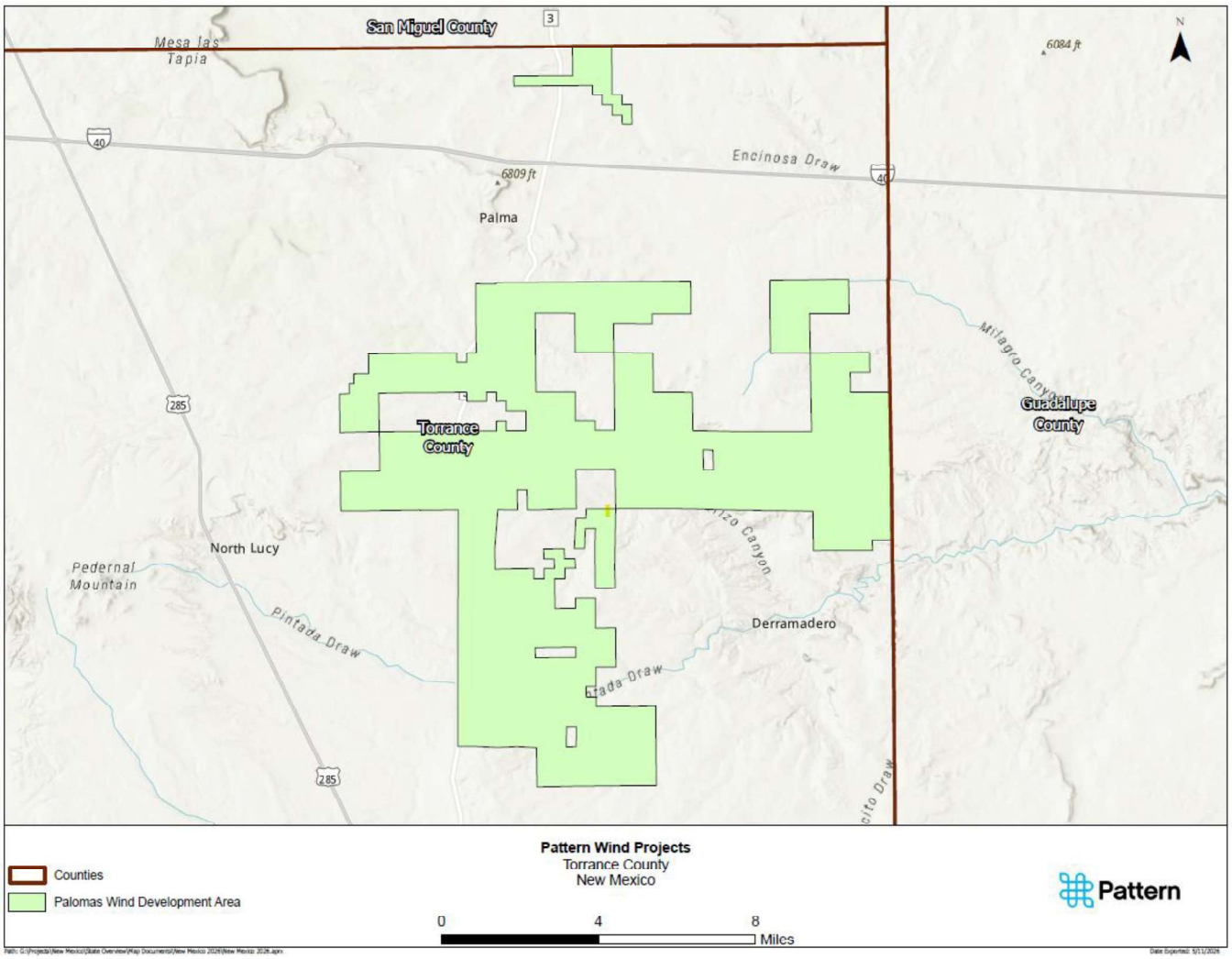
Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.

Site Map (San Miguel County)



Site Map (Torrance County)



Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT B
ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

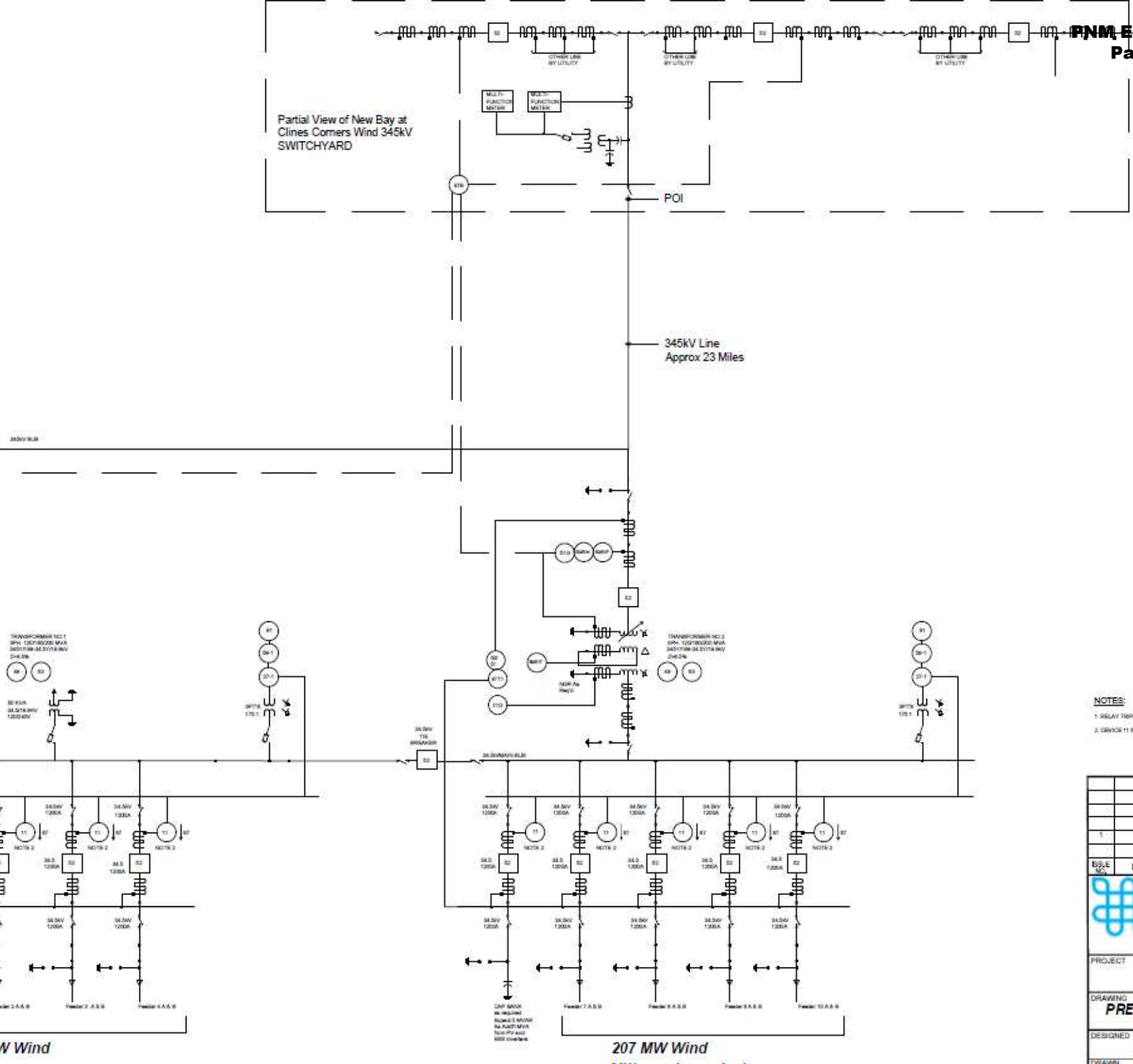
1. See attached one-line diagram and communications and telemetry diagram of the Project. The diagrams indicate the following:

    - 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 Western Spirit Switchyard.



NOTES:

1. RELAY TRIPPING AND LOCK-OUT CONTROL LINES ARE SHOWN FOR CLARITY.
2. DEVICE 11 INCLUDES THE FOLLOWING FUNCTIONS: 50,51,51N & 67.

ISSUE NO.	DATE	DESIGN	DRWN	CHKD	APPD	ISSUE
1						

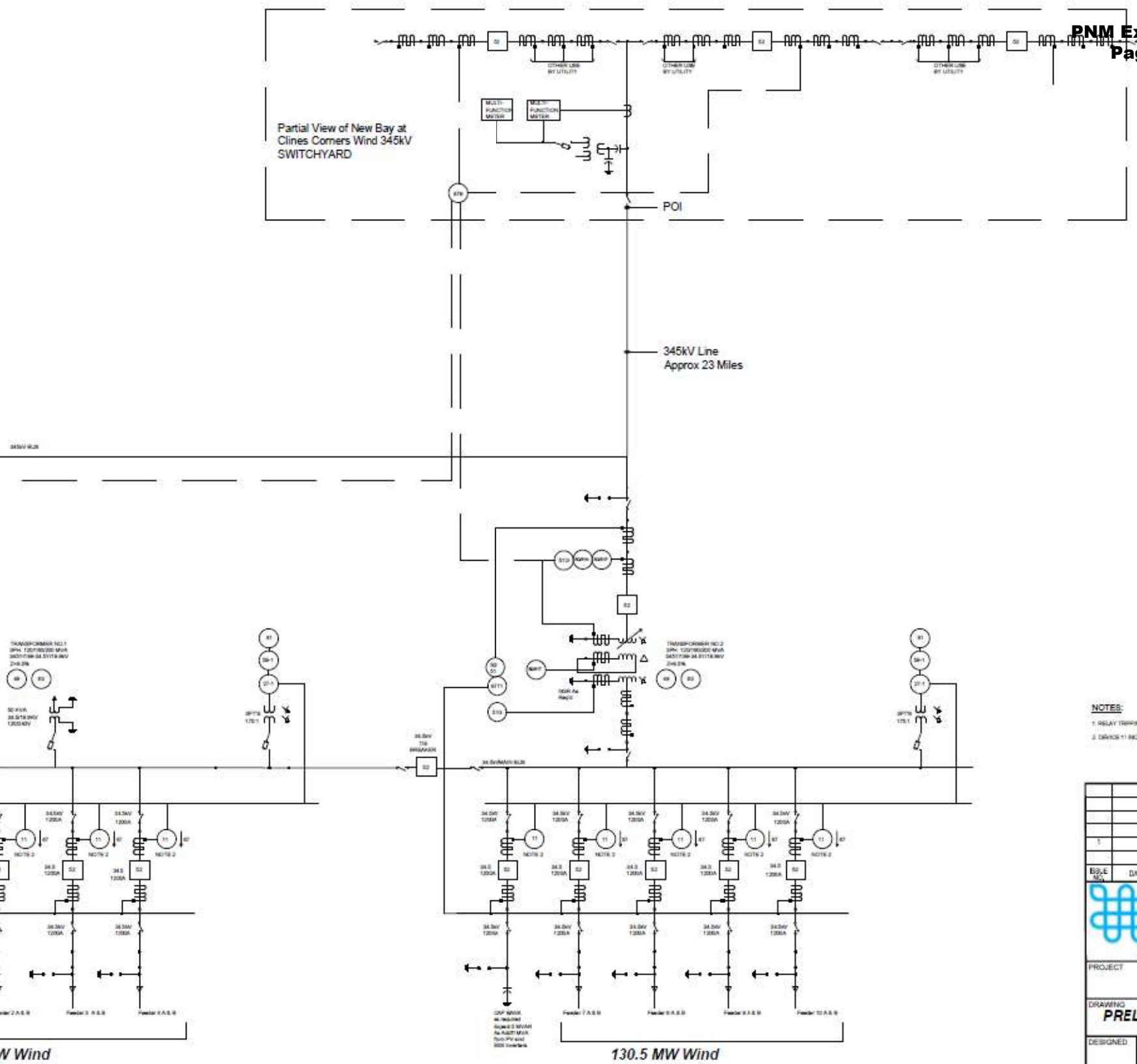
Pattern

1600 Smith St, Suite 4025 Houston, TX 7700

PROJECT: PALOMAS WIND PROJEC

DRAWING: PRELIMINARY SUBSTATION ONE LINE

DESIGNED	DATE	DRAWING NO.
	Mar 2025	SL-001



NOTES:

1. RELAY TRIPPING AND LOCK-OUT CONTROL LINES ARE SHOWN FOR CLARITY.
2. DEVICE 11 INCLUDES THE FOLLOWING FUNCTIONS: 50,51,51N & 87.

ISSUE NO.	DATE	DESIGN	DRWN	CHKD	APP'D	ISSUED
1						

Pattern

1600 Smith St, Suite 4025 Houston, TX 7700

PROJECT: PALOMAS WIND PROJECT

DRAWING: PRELIMINARY SUBSTATION ONE LINE

DESIGNED	DATE	DRAWING NO.
	Mar 2025	SL-001

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT C
DESCRIPTION OF SITE[1]

TRACT A:

Torrance Co. TOWNSHIP NINE (9) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 1: S/2 N/2, SE/4, S/2 SW/4, NE/4 SW/4
SECTION 2: LOTS 3 and 4
SECTION 3: LOTS 1 and 2
SECTION 11: S/2 NW/4, N/2 SW/4
SECTION 12: NW/4 NW/4

TOWNSHIP NINE (9) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 2: LOT 3, SE/4 NV/4, SW/4 SE/4, S/2 SW/4
SECTION 3: S/2 S/2
SECTION 4: S/2 SE/4
SECTION 5: SW/4 NE/4, SE/4 NW/4, NW/4 SE/4, NE/4 SW/4
SECTION 11: E/2 NE/4, NW/4 NE/4
SECTION 12: E/2 SW/4, NW/4 SW/4, SW/4 NW/4

San Miguel Co. TOWNSHIP TEN (10) NORTH, RANGE TWELVE (12) EAST, NMPM

SECTION 1: NE/4
SECTION 2: E/2 NE/4
SECTION 3: NW/4 NE/4 (LOT 2)
SECTION 10: E/2 SE/4
SECTION 11: W/2 SW/4
SECTION 13: S/2 NE/4, NE/4 SE/4
SECTION 14: S/2 NE/4, N/2 SE/4
SECTION 22: N/2 SE/4
SECTION 23: S/2
SECTION 24: SW/4, W/2 SE/4
SECTION 26: E/2 NW/4, W/2 NE/4

[1] NTD: To be updated ~60 days prior to COD.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 20: NE/4, NE/4 SE/4
SECTION 21: N/2, N/2 S/2, S/2 SE/4
SECTION 22: ALL
SECTION 25: W/2 W/2, S/2 SE/4, NE/4 SE/4, SE/4 SW/4
SECTION 26: ALL
SECTION 27: ALL
SECTION 28: E/2, SW/4, NE/4 NW/4, S/2 NW/4
SECTION 29: W/2, E/2 NE/4, S/2 SE/4, NE/4 SE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 W/2, NE/4, W/2 SE/4, SE/4 SE/4
SECTION 31: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 32: ALL
SECTION 33: ALL
SECTION 34: ALL
SECTION 35: ALL
SECTION 36: ALL

TOWNSHIP ELEVEN (11) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 19: LOTS 3 & 4, E/2 SW/4, SE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 31: LOTS 1, 2, 3, 4, E/2 W/2, NE/4, N/2 SE/4, SW/4 SE/4

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

TOWNSHIP TEN (10) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 3: S/2 S/2
SECTION 6: S/2 N/2, N/2 SW/4, W/2 SE/4, NE/4 SE/4
SECTION 12: E/2 E/2
SECTION 13: N/2, SE/4, N/2 SW/4
SECTION 14: N/2 SE/4
SECTION 18: LOT 3
SECTION 20: S/2 SW/4
SECTION 23: S/2 NE/4
SECTION 24: S/2 NW/4, NE/4, NE/4 SE/4
SECTION 29: N/2 NW/4
SECTION 30: LOT 1, NE/4 NW/4, N/2 NE/4

TOWNSHIP TEN (10) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 4: S/2 SW/4
SECTION 6: NE/4 SE/4
SECTION 8: SW/4
SECTION 9: W/2 NE/4, SE/4 NE/4, N/2 SE/4, NE/4 SW/4, N/2 NW/4
SECTION 10: S/2 N/2, N/2 S/2, SE/4 SE/4, S/2 SW/4,
Less and except 11.174 acres deeded to the State of New Mexico for State Road 3, by Warranty Deed recorded in Book 229, of deeds page 5796.
SECTION 11: S/2 NW/4, W/2 SW/4
SECTION 14: NW/4 SW/4
SECTION 15: NW/4 NW/4, E/2 W/2, N/2 SE/4, SW/4 SE/4, less and except 5.907 acres deeded to the State of New Mexico for State Road 3, by Warranty Deeds in Book 229, pages 5793 and 5795.
SECTION 17: NW/4 NW/4, E/2 W/2
SECTION 19: Lots 3 and 4, SE/4 SW/4
SECTION 20: N/2 NW/4, SE/4 NW/4, SW/4 NE/4, N/2 SE/4, SE/4 SE/4
SECTION 21: SW/4 SW/4
SECTION 26: SE/4
SECTION 28: NW/4 NW/4, E/2 W/2
SECTION 30: E/2 NW/4, SW/4 NE/4, W/2 SE/4, SE/4 SE/4
SECTION 31: N/2 NE/4
SECTION 32: NW/4, NE/4 SE/4
SECTION 33: E/2 NW/4, NW/4 SE/4, N/2 SW/4
SECTION 34: SW/4 NW/4, SW/4 NE/4, W/2 SE/4, SE/4 SE/4, SW/4, Less and except 7.372 acres deeded to the State of New Mexico for State Road 3, by Warranty Deed recorded in Book 229, of deeds page 5794.

TOWNSHIP ELEVEN (11) NORTH, RANGE TWELVE (12) EAST, NMPM

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 29: SW/4 SW/4
SECTION 30: S/2 SE/4
SECTION 31: NW/4 NE/4
SECTION 34: SW/4 NE/4, E/2 NE/4, W/2 SE/4, SW/4
SECTION 35: E/2 SE/4, W/2 NW/4

TOWNSHIP ELEVEN (11) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 20: SW/4 SE/4
SECTION 25: NE/4, E/2 NW/4, NE/4 SW/4, NW/4 SE/4
SECTION 29: W/2 NE/4, NW/4 SE/4

TRACT B:

Torrance Co. TOWNSHIP NINE (9) NORTH, RANGE ELEVEN (11) EAST, NMPM

SECTION 2: ALL
SECTION 16: N/2

TOWNSHIP NINE (9) NORTH, RANGE TWELVE (12) EAST, NMPM

SECTION 2: E/2, NW/4, W/2 SW/4

TOWNSHIP NINE (9) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 2: LOTS 1 and 2, S/2 N/2, S/2

TOWNSHIP NINE (9) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 2: LOTS 1, 2 and 4, S/2 NE/4, SW/4 NW/4, N/2 S/2, SE/4 SE/4
SECTION 16: ALL

Santa Fe Co. TOWNSHIP TEN (10) NORTH, RANGE ELEVEN (11) EAST, NMPM

SECTION 5: SW/4, S/2 SE/4
SECTION 6: S/2
SECTION 7: LOTS 1, 2, 3, 4, E/2 W/2, E/2
SECTION 8: ALL
SECTION 9: ALL
SECTION 16: ALL
SECTION 17: ALL

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 18: LOTS 1, 2, 3, 4, E/2 W/2, E/2
SECTION 19: LOTS 1, 2, 3, 4, E/2 W/2, E/2
SECTION 20: N/2, SE/4
SECTION 21: ALL
SECTION 22: ALL
SECTION 27: ALL
SECTION 28: ALL
SECTION 29: N/2 N/2, SW/4 NW/4, SW/4, S/2 SE/4, SE/4 NE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 N/2, E/2
SECTION 32: ALL
SECTION 33: ALL
SECTION 34: ALL
SECTION 35: NW/4

San Miguel Co. TOWNSHIP TEN (10) NORTH, RANGE TWELVE (12) EAST, NMPM

SECTION 1: LOTS 3, 4, S/2, S/2 NW/4
SECTION 2: LOTS 2, 3, 4, S/2, S/2 NW/4, SW/4 NE/4
SECTION 3: LOTS 1, 3, 4, S/2 N/2, S/2
SECTION 4: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 5: LOT 1, E/2 SE/4, SE/4 NE/4
SECTION 11: N/2, SE/4, E/2 SW/4
SECTION 12: ALL
SECTION 13: W/2, N/2 NE/4, S/2 SE/4, NW/4 SE/4
SECTION 14: W/2, N/2 NE/4, S/2 SE/4
SECTION 15: NE/4 NE/4
SECTION 16: SW/4, W/2 SE/4
SECTION 22: S/2 SE/4
SECTION 23: N/2
SECTION 24: N/2, E/2 SE/4
SECTION 25: N/2
SECTION 26: E/2 NE/4
SECTION 27: S/2 SE/4
SECTION 28: ALL
SECTION 29: N/2, SE/4, E/2 SW/4
SECTION 32: ALL
SECTION 33: ALL
SECTION 34: N/2, N/2 S/2, S/2 SW/4, SE/4 SE/4
SECTION 35: ALL
SECTION 36: ALL

TOWNSHIP TEN (10) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 1: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 2: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 3: LOTS 1, 2, 3, 4, S/2 N/2, N/2 S/2

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 4: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 5: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 6: LOTS 1, 2, 3, 4, 7, SE/4 SW/4, SE/4 SE/4
SECTION 7: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 8: ALL
SECTION 9: ALL
SECTION 10: ALL
SECTION 11: ALL
SECTION 12: W/2, W/2 E/2
SECTION 13: S/2 SW/4
SECTION 14: W/2, NE/4, S/2 SE/4
SECTION 15: ALL
SECTION 16: ALL
SECTION 17: N/2 NE/4, SW/4 NE/4
SECTION 32: ALL
SECTION 36: ALL

TOWNSHIP TEN (10) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 2: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (CALL)
SECTION 3: LOTS 1, 3, 4, S/2 NW/4, SW/4, SE/4 NE/4, NE/4 SE/4
SECTION 4: LOTS 1, 2, 3, 4, S/2 N/2, SE/4, N/2 SW/4
SECTION 5: LOTS 1, 2, 3, 4, S/2 N/2, S/2 (ALL)
SECTION 6: LOTS 1, 2, 3, 4, 5, 6, 7, SE/4 NW/4, S/2 NE/4, E/2 SW/4, W/2 SE/4, SE/4 SE/4
SECTION 7: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 8: N/2, SE/4
SECTION 9: S/2 S/2, S/2 NW/4, NW/4 SW/4, NE/4 NE/4
SECTION 10: N/2 NW/4
SECTION 11: E/2, N/2 NW/4, E/2 SW/4
SECTION 12: ALL
SECTION 13: ALL
SECTION 14: E/2, E/2 W/2, SW/4 SW/4
SECTION 15: W/2 SW/4, SW/4 NW/4, SE/4 SE/4, less and except 1.322 acres conveyed to the New Mexico State Highway Commission by Grant of Right-of-Way, recorded in Book 230, page 1395.
SECTION 16: ALL
SECTION 17: E/2, W/2 SW/4, SW/4 NW/4
SECTION 18: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 19: LOTS 1, 2, E/2, E/2 NW/4, NE/4 SW/4
SECTION 20: SW/4, SW/4 NW/4, N/2 NE/4, SE/4 NE/4, SW/4 SE/4
SECTION 21: N/2, SE/4, E/2 SW/4, NW/4 SW/4
SECTION 22: ALL
SECTION 23: ALL
SECTION 24: ALL

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 25: NW/4, W/2 NE/4, S/2
SECTION 26: N/2, SW/4
SECTION 27: ALL
SECTION 28: E/2, W/2 SW/4, SW/4 NW/4
SECTION 29: ALL
SECTION 30: LOTS 1, 2, 3, 4, E/2 SW/4, N/2 NE/4, SE/4 NE/4, NE/4 SE/4
SECTION 31: LOTS 1, 2, 3, 4, E/2 W/2, SE/4, S/2 NE/4
SECTION 32: NE/4, SW/4, W/2 SE/4, SE/4 SE/4
SECTION 33: NE/4, S/2 S/2, W/2 NW/4, NE/4 SE/4
SECTION 34: N/2 N/2, SE/4 NW/4, SE/4 NE/4, NE/4 SE/4
SECTION 35: ALL
SECTION 36: ALL

Less and except from the above lands in Sections 22, 27 and 34, a total of 38.204 acres conveyed to the New Mexico State Highway Commission by Grant of Right-of-Way, recorded in Book 230, page 1393.

TOWNSHIP ELEVEN (11) NORTH, RANGE TWELVE (12) EAST, NMPM

SECTION 14: ALL
SECTION 19: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 20: ALL
SECTION 21: ALL
SECTION 22: ALL
SECTION 23: ALL
SECTION 25: ALL
SECTION 26: ALL
SECTION 27: ALL
SECTION 28: ALL
SECTION 29: N/2, N/2 S/2, SE/4 SW/4, S/2 SE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 W/2, NE/4, N/2 SE/4
SECTION 31: E/2 E/2, W/2 SE/4, SW/4 NE/4
SECTION 32: ALL
SECTION 33: ALL
SECTION 34: NW/4, NW/4 NE/4, E/2 SE/4
SECTION 35: SW/4, E/2 NW/4, NE/4, W/2 SE/4
SECTION 36: ALL

TOWNSHIP ELEVEN (11) NORTH, RANGE THIRTEEN (13) EAST, NMPM

SECTION 8: SE/4
SECTION 9: S/2, NE/4
SECTION 16: ALL
SECTION 17: NE/4, E/2 SE/4, SW/4 SE/4

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

SECTION 20: NE/4, NE/4 SE/4
SECTION 21: N/2, N/2 S/2, S/2 SE/4
SECTION 22: ALL
SECTION 25: W/2 W/2, S/2 SE/4, NE/4 SE/4, SE/4 SW/4
SECTION 26: ALL
SECTION 27: ALL
SECTION 28: E/2, SW/4, NE/4 NW/4, S/2 NW/4
SECTION 29: W/2, E/2 NE/4, S/2 SE/4, NE/4 SE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 W/2, NE/4, W/2 SE/4, SE/4 SE/4
SECTION 31: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 32: ALL
SECTION 33: ALL
SECTION 34: ALL
SECTION 35: ALL
SECTION 36: ALL

TOWNSHIP ELEVEN (11) NORTH, RANGE FOURTEEN (14) EAST, NMPM

SECTION 19: LOTS 3 & 4, E/2 SW/4, SE/4
SECTION 30: LOTS 1, 2, 3, 4, E/2 W/2, E/2 (ALL)
SECTION 31: LOTS 1, 2, 3, 4, E/2 W/2, NE/4, N/2 SE/4, SW/4 SE/4

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

PARCEL A

Township Six (6) North, Range Twelve (12) East, N.M.P.M.

All of Sections 1

Township Six (6) North, Range Fourteen (14) East, N.M.P.M.

All of Sections 1, 3

Township Seven (7) North. Range Fourteen (14) East, N.M.P.M.

All of Sections 5, 8, 17, 20, 21, 23, 27, 28, 29, 33 and 35

The Lots 1 and 2, SW¼NE¼, SE¼NW¼ of Section 2

S½ of Section 9
S½SW¼, NE¼SW¼, NW¼SE¼, S½NE¼, NW¼NE¼, NE¼NW¼ of Section 10
E½ of Section 11
SW¼, S½NW¼ of Section 14
S½ of Section 15
N½, S½S½ of Section 22

SE¼NE¼, N½SE¼, S½SW¼, NW¼SW¼ of Section 26
W½, W½E½, E½NE¼ of Section 34

LESS AND EXCEPT those portions of the W½ of Section 5, NE¼ of Section 6, W½ of Section 8, W½ of Section 17, E½ of Section 19, W½ of Section 20, SW¼, SW¼NW¼ of Section 29, E½ of Section 30 and E½ of Section 31 conveyed to the State Highway Department of New Mexico by Special Warranty Deed recorded in the records of the County Clerk of Torrance County, New Mexico in Book 247, Page 3077, on July 12, 1983.

LESS AND EXCEPT that portion of the NW¼NW¼ of Section 29 conveyed to the State Highway Department of New Mexico by Warranty Deed recorded in the records of the County Clerk of Torrance County, New Mexico in Book 247, Page 2399, on March 7, 1983.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Township Seven (7) North, Range Fifteen (15) East, N.M.P.M.

N½, N½S½, S½SW¼ of Section 1 E½E½,
W½NE¼, NW¼SE¼ of Section 2

Township Eight (8) North, Range Thirteen (13) East, N.M.P.M.

That portion of the NE¼SW¼ of Section 14 described in Warranty Deed to Bigbee Brothers Cattle Company recorded in the records of the County Clerk of Torrance County, New Mexico in Book 113, Page 403, on January 17, 1958.

S½SE¼, SE¼SW¼, NE¼SE¼ of Section 25

Township Eight (8) North, Range Fourteen (14) East, N.M.P.M.

SW¼SE¼ of Section 8
N½NE¼, SW¼NE¼, SE¼NW¼ of Section 11
N½N½ of Section 12
E½W½, NW¼NE¼ of Section 17
NE¼NW¼, NW¼NE¼ of Section 20
S½SE¼ of Section 22
S½SW¼ of Section 23
S½S½ of Section 25
NW¼NE¼, NE¼NW¼ of Section 26
W½W½, NE¼SW¼, S½SE¼, N½NE¼ of Section 27
SE¼NE¼, NE¼SE¼, SW¼NW¼ of Section 28
N½SE¼, SE¼NE¼ of Section 29
The Lot 4, E½SW¼ of Section 30
The Lot 1 of Section 31
SE¼NE¼, NE¼SE¼ of Section 33
NW¼SW¼, W½NW¼, NE¼NW¼, NW¼NE¼ of Section 34

Township Eight (8) North, Range Fifteen (15) East, N.M.P.M.

W½NE¼, NE¼NW¼, NW¼SE¼ of Section 10
NW¼ of Section 13
SW¼, N½SE¼, S½NE¼ of Section 14
S½NW¼, N½SE¼, SE¼SE¼ of Section 29
S½NE¼ of Section 30
NE¼NE¼ of Section 32
S½SE¼ of Section 35

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Township Six (6) North, Range Fourteen (14) East, N.M.P.M.

All of Section 2

Township Seven (7) North, Range Fourteen (14) East, N.M.P.M.

All of Sections 16, 32 and 36

The Lot 3, SW¼NW¼, W½SW¼, SE¼, SE¼NE¼ of Section 2
Township Seven (7) North, Range Fifteen (15) East, N.M.P.M.
W½, SW¼SE¼ of Section 2
Township Eight (8) North, Range Thirteen (13) East, N.M.P.M.

All of Sections 13, 23, 35 and 36

E½E½, W½SE¼, SE¼SW¼ of Section 14
N½, W½SW¼, NE¼SW¼, NW¼SE¼ of Section 25

Township Eight (8) North, Range Fourteen (14) East, N.M.P.M.
All of Sections 1, 2, 3, 4, 9, 13, 16, 18, 24, 32 and 36
E½ of Section 5
NE¼, N½SE¼, SE¼SE¼ of Section 8
S½, N½NW¼, SW¼NW¼, SE¼NE¼
of Section 11
E½E½, W½SE¼, SW¼NE¼, W½SW¼, SW¼NW¼ of Section 17

N½N½, S½NE¼, SE¼NW¼, E½SE¼, SW¼SW¼ of Section 21
N½, N½S½, S½SW¼ of Section 22
N½, N½S½ of Section 25
S½, S½N½, NE¼NE¼, NW¼NW¼ of Section 26
E½NW¼, S½NE¼, N½SE¼, SE¼SW¼ of Section 27
W½E½, E½W½, NE¼NE¼, NW¼NW¼, W½SW¼, SE¼SE¼ of Section 28
W½, N½NE¼, SW¼NE¼, S½SE¼ of Section 29
E½, NW¼, the Lot 3 of Section 30
S½, S½N½, N½NE¼, NE¼NW¼ of Section 31
W½, W½NE¼, NE¼NE¼, SE¼SE¼ of Section 33

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

S½S½, NE¼SW¼, SE¼NW¼, N½SE¼, S½NE¼, NE¼NE¼ of Section 34

Township Eight (8) North, Range Fifteen (15) East, N.M.P.M.

All of Sections 2, 3, 6, 19, 23, 24, 25, 26, 27, 28, 31, 33, 34 and 36

E½E½, SW¼SE¼, SW¼, S½NW¼, NW¼NW¼ of Section 10
N½N½, S½NW¼, S½SE¼ of Section 14
N½N½, S½NE¼, W½SW¼, SW¼SE¼ of Section 29
W½, N½NE¼, SE¼ of Section 30
S½, S½N½, N½NW¼, NW¼NE¼ of Section 32
N½, N½S½, S½SW¼ of Section 35

Township 6 North, Range 13 East, Torrance County, New Mexico:
Sections 21 and 28
Section 33 (W2; S2SW4)

Township 9 North, Range 14 East, Torrance County, New Mexico:
Section 23, 25, 26 and 36

Section	Township	Range	Subdivision	County
14	08N	14E	NE4NW4, NW4SW4, SE4NW4, SW4NW4, SW4SW4	Torrance
15	08N	14E	SE4SE4	Torrance
23	08N	14E	NW4NW4	Torrance
11	09N	14E	NE4NW4, NW4SE4, SE4NW4, SW4NE4, SW4SE4	Torrance
14	09N	14E	NE4SE4, NW4NE4, NW4SE4, SE4SE4, SW4NE4, SW4SE4	Torrance
13	10N	11E	NE4SE4, SE4NE4	Santa Fe

Section 14 8N14E NE4SW4 NW4NE4,

5	10N	12E	SW4SE4	San Miguel
7	10N	12E	NE4SE4, SE4SE4, SW4SE4	San Miguel
8	10N	12E	NE4SW4, NW4NE4, NW4SW4, SE4NW4, SW4NE4, SW4SW4	San Miguel
18	10N	12E	2, NE4NW4, NW4NE4, SE4NW4	San Miguel

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT D
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

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

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

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

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:
Wells Fargo Bank
ABA# 121000248
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

PALOMAS POWER LLC

All Notices/Invoices:
Delivery Address:
1088 Sansome St.
San Francisco, CA 94111
Attn: General Counsel
Phone: (415) 283-4000
Email: GeneralCounsel@patternenergy.com
Invoices:
Attn: Pattern Energy Settlements
Phone: 713-308-4200
Email: AccountingSettlements@patternenergy.com

Mailing Address (if different from above):

Wire Transfer:
BNK: JPMORGAN CHASE BANK, N.A. - NEW YORK
ABA: 021000021
ACCT: 925912088

With additional Notice of an Event of Default, termination and other legal notices to:
Attn: General Counsel
Address: 1088 SANSOME ST. SAN FRANCISCO, CA 94111
Phone: (415) 283-4000
Email: GeneralCounsel@patternenergy.com

Project Manager:
Emergency Contact:
Attn: 24/7 Operations Control Center
Phone: (713) 308-4242
Email: PatternOCC@patternenergy.com

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Contract Manager:
Public Service Company of New Mexico
Attention: Eric Meadors
2401 Aztec Rd. NE
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: Laurie Williams
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0641

With a copy to:
Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT E

SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

Corresponding Authority	Document/Description
Bureau of Land Management (BLM)	Mining Plan, Contract for the Sale of Mineral Materials
Environmental Protection Agency (EPA)	National Pollution Discharge Elimination System (NPDES) Construction General Permits (CGP) & Notices of Intent
New Mexico Construction Industries Division	Building Permits for substation, O&M Building, foundations and transmission line
New Mexico Department of Transportation	Highway Access Permit
New Mexico Department of Transportation	Crossing Permit
New Mexico Energy, Minerals & Natural Resources Department	Gravel Pit Mine Registrations, if required
New Mexico Environment Department (NMED)	Air Quality General Permits for Concrete Batch Plants
New Mexico Environment Department (NMED)	Air Quality General Permits for Rock Crushing
New Mexico Environment Department (NMED)	Petroleum Storage Tank Registration, if required
New Mexico Environment Department (NMED)	On-site Septic/Sewage facility permit for O&M Buildings
New Mexico Public Regulation Commission (PRC)	Location Control Approval, Generation
New Mexico Public Regulation Commission (PRC)	Location Control Approval, Transmission
New Mexico Public Regulation Commission (PRC)	ROW Width Determination
New Mexico Regulation & Licensing Department, Construction Industries Division	Electrical Permit (Wind Turbine)

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

New Mexico Regulation & Licensing Department, Construction Industries Division	Building Permit (Foundations)
New Mexico Regulation and Licensing Department (RLD)	Electrical/Fiber Permits for collection circuits, WTG towers, substation and transmission line segments.
New Mexico State Engineers Office (SEO)	Groundwater/Surface Water Commercial Use, if required
San Miguel County	Conditional Use Permit for Wind Energy Facilities
San Miguel County	Road Use and Crossing Agreement, if required
Torrance County	Road Use and Crossing Agreement, as amended
Torrance County	Special Use Zone District Permit
United States Energy Information Administration (EIA)	EIA Plant Code Registration (Form 860)
United States Federal Aviation Administration (FAA)	Determinations of No Hazard to Air Navigation, if required
United States Federal Aviation Administration (FAA)	Notice of Actual Construction or Alteration (Form 7460-2), if required
US Army Corps of Engineers	Clean Water Act 404 Nationwide 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 this PPA.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT F
COMMISSIONING AND ANNUAL TESTING

Commissioning Tests

- Turbine Electrical Insulation Resistance and Continuity Tests (Generators, Cables, Transformers)
- MV Collection System Insulation Resistance and Continuity Tests
- GSU Transformer Testing
- Breaker and Switchgear Functionality Tests
- Turbine OEM Commissioning Procedures
- Pitch/Yaw System Commissioning and Functional Tests
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- SCADA Functionality Test (or equivalent)
  - Automatic Generation Control (AGC) Functionality Test (or equivalent)
  - Voltage Setpoint Functionality Test
  - Historian Data Link Functionality Tests (See Section 3.4)
  - Project Reliability Test
    a. Commissioning Performance Test (See Section 10.8)

Annual Tests

- Annual Performance Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

SCADA Functionality Test

Purpose:

This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering ("**POE**"). This test must be performed prior to energization of the Project.

Procedure**:**

Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Buyer 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.

Automatic Generation Control (AGC) Functionality Test

Purpose:

This test will demonstrate the ability of the Project to synch to AGC. This test will occur after

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

the Project has energized.

System starting state:

The Project will be in the on-line state and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure**:**

Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team four (4) to six (6) weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour operational activities.

Remote Mode Testing

Seller will set the Project to REMOTE mode, and verify the Project accepts AGC.

- Operator will send a setpoint to the Project
- Validate the Project responds to the setpoint
- Operator will send a setpoint above and/or below Project operation limits
    - Validate the Project sends alarms

Buyer's Operator will set the AGC Control mode to MARKET:

- Validate the Project responds to a DOT from CAISO
- Validate the setpoint and feedback matches the DOT

Buyer's Operator change the Project to MARKET in AGC

- Validate the Project changes the control mode

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG

- Hold for up to 10 minutes
- Validate the Project responds to ACE of +/- 10 MW

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Local Mode Testing

On-site personnel change the Project to LOCAL mode

- Validate the Project changes from REMOTE to LOCAL mode
- Validate the Project follows gross MW requested on-site
- Validate the Project does not respond to setpoint changes

System end state:

The Project will be in the on-line state and with control mode set to LOCAL.

B. Voltage Setpoint Functionality Test

[LATER]

C. Buyer Data Link Functionality Test

The Buyer Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Project control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party) and assist as necessary to set up the Buyer Data Link.

Seller shall prepare and submit to Buyer a Data Link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Buyer Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Buyer Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

D. Project Reliability Testing

D.1 Operational Reliability

A. Purpose of Test

To demonstrate the short-term reliability of the Project.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

B. Test Procedure

The Project shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the Project remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any material alarms, faults, trips, or manual intervention required.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT G-1
INSURANCE COVERAGES

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

A. Workers' Compensation Insurance that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million Dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Network Security and Privacy Liability. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

F. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

G. 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 PPA, 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 Seller under this PPA. 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Seller in performing services under this PPA. 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 Seller throughout the performance of services or storage of data in connection with this PPA and for at least three (3) years thereafter either through policies in force or through an extended reporting period. Seller shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Seller 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.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT G-2

FORM OF ATTESTATION AND BILL OF SALE

Pursuant to WREGIS, _____ ("Seller") hereby sells, transfers and delivers to Buyer the RECs and Environmental Attributes associated with the generation of Energy at the Project, as detailed in the Power Purchase Agreement between the Parties dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

_____
Name of Renewable Energy Facility

_____	_____	_____
Fuel Type	Maximum Power Output (MW)	Operation Date
_____	_____	_____
Dates		MWh generated
_____, 20___		_____

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents, to the best of its knowledge, as follows:

1. to the best of its knowledge, the information provided herein is true and correct;
2. its sale to Buyer is its one and only sale of the RECS and Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such RECS and Environmental Attributes;
3. the Project identified above produced the number of MWh above during the period indicated above;
4. Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and
5. Seller owns the _____ _____. [Name of the Renewable Energy Facility]

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

above referenced Energy.

Contact Person: _____
Phone: _____; Fax: _____

[Seller]

Signed: _____
Name: _____
Title: _____
Date: _____

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT H
AVAILABILITY GUARANTEE

Section 1. Definitions.

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

"**Actual Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Available Hours for all Wind Turbines that were part of the Project at the beginning of the relevant Commercial Operation Year, divided by (ii) the sum of all Period Hours in the relevant Commercial Operation Year for all Wind Turbines that were part of the Project on the Commercial Operation Date.

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

"**Annual Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Report**" has the meaning set forth in Section 2(5) of this Exhibit.

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

"**Available Hours**" means for each Wind Turbine, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Period Hours in such Commercial Operation Year, minus (b) the aggregate Unavailable Hours for such Wind Turbine in such Commercial Operation Year, plus (c) the aggregate Excused Hours for such Wind Turbine in such Commercial Operation Year. Any event that results in unavailability of a Wind Turbine 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 Wind Turbine is available, but for less than the full amount of its installed capacity, the Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Wind Turbine.

"**Excused Hours**" means, in any Commercial Operation Year, the aggregate Seller Excused Hours for such Commercial Operation Year. Any event that results in unavailability of a Wind Turbine 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 Wind Turbine is available, but for less than the full amount of its installed capacity, the Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Wind Turbine.

"**Guaranteed Availability Percentage**" has the meaning set forth in Section 2(1) of this Exhibit.

"**Period Hours**" means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, or eight thousand seven hundred eighty-four (8,784) hours for a Commercial Operation Year that encompasses a leap year, as may be prorated for any partial Commercial Operation Year.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

"**Unavailable Hours**" means those hours a Wind Turbine is not available to operate because it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Energy to the Point of Delivery. Any event that results in unavailability of a Wind Turbine 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 Wind Turbine is unavailable, but for less than the full amount of its installed capacity, the Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Wind Turbine.

"**Wind Turbine**" means a single wind turbine generating system, including the tower, pad, transformer and controller system, installed as part of the Project.

Section 2. Availability Guarantee.

1. Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Availability Percentage equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date ("**Guaranteed Availability Percentage**").

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

4. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed Availability Percentage shall be the payment of damages up to the Annual Availability Damages Cap and Aggregate Availability Damages Cap, and the right to declare an Event of Default pursuant to Sections 12.1(A)(8) and 12.1(A)(9), if and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies, including for Events of Default that may have caused Seller to fail to meet the Guaranteed Availability Percentage.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Availability Percentage for the previous Commercial Operation Year and the Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Availability Damages Cap has been reached, if applicable. If Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the PPA.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

ATTACHMENT 1 TO EXHIBIT H

EXAMPLE CALCULATION OF AVAILABILITY DAMAGES

I. Example of Actual Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 64 Wind Turbines were part of the Project.

The Wind Turbines had the following operating characteristics:

		Hours	Wind Turbines Affected	Wind Turbine Hours
	Period Hours ("PH")	8,760	64	560,640
	Unavailable Hours ("UH")			5,000
	Excused Hours ("EH")			1,000

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

Sum of Available Hours = PH – UH + EH: 556,640 = 560,640 – 5,000 + 1000

Actual Energy Availability Percentage

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

(a) Sum of Available Hours: 556,640 hours

(b) Sum of Period Hours: 560,640 hours

(c) Actual Availability Percentage: (Sum of Available Hours/Sum of Period Hours) x 100 = (556,640/560,640) x 100 = 99.3%

II. Example of Availability Damages

Example of Availability Damages based on the following assumed facts:

(a) Seller's Guaranteed Availability in Commercial Operation Year 4 = 90%.

(b) Seller's Actual Availability in Commercial Operation Year 4 = 85%.

(c) Energy Output Payment Rate = $20.00

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(d) Metered Output = 225,784 MWh

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

Energy Output Payment Rate x (Guaranteed Availability Percentage in Commercial Operation Year 4 — Actual Availability Percentage for Commercial Operation Year 4) x (Metered Output for Commercial Operation Year 4 ÷ Actual Availability Percentage for Commercial Operation Year 4 x Guaranteed Availability Percentage for Commercial Operation Year 4) = Availability Damage:

$20.00 x (.90 - .85) x (225,784 ÷ .85 *.90) = $239,065

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT I
FORM OF SELLER GUARANTY

GUARANTY

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

RECITALS:

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

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

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

* * *

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

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum

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

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

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

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

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

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

(a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

(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.

a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality,

lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

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

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

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

(d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

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

(f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:

(i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and

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

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

11. THIRD PARTY BENEFICIARY RIGHTS. This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

* * *

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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

[●]
By:_____

Name:_____

Title:_____

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT J
COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by _____("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Wind Turbines with an aggregate capacity of at least ninety percent (90%) of Guaranteed Capacity have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Wind Turbine manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects.

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: _____

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT K
(Reserved)

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT L
ANNUAL GENERATION FORECAST

The following represents the annual P50 forecast of net, AC generation delivered to the Point of Delivery. On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

Month	On-Peak Energy Delivered (MWh)	Off-Peak Energy Delivered (MWh)
January	165,712	153,673
February	145,482	134,956
March	167,708	127,445
April	173,628	113,926
May	142,990	107,467
June	112,835	88,035
July	76,551	51,199
August	81,859	61,902
September	94,285	86,728
October	137,548	119,477
November	148,318	137,676
December	187,707	160,152
Total Annual	1,634,623	1,342,636
Total Combined Annual	2,977,259	
Annual Capacity Factor	42.43%	

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT M
PPA FUNCTIONAL MAPPING

The Project's NERC verified PPA Generator Owner, PPA Generator Operator and Scheduling Coordinator Contact functional mapping requirements information below 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)				

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT N
INTERCONNECTION METERING STANDARD

Exhibit N shall follow the current Interconnection Metering Standard for the Public Service Company of New Mexico.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT O
COMMISSIONING AND TESTING PROCESS

Section 1. Purpose.

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the PPA and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the PPA and complete all testing as defined in Exhibit F of the PPA.

Figure 1 is for reference purposes only.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the PPA.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.

CONTACT	Company	Group	Address	Project Role	Office Phone	Mobile Phone	E-MAIL
(name)	PNM	Generation Engineering	2401 Aztec Rd NE Albuquerque, NM 87107	Contract Manager	505-241-XXXX	505-241-XXXX	…@pnm.com

The POC List shall identify, but not be limited to, the following:

Buyer Team: Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting,

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 modeling for functionality required for the participating resource schedule coordination (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.

- "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- **"**Project Manager**" –** Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.

- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the generation systems. The OEM shall define and execute all OEM-required equipment and system testing.

- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.

- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.

- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

    - Balancing Authority (BA)
    - 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:

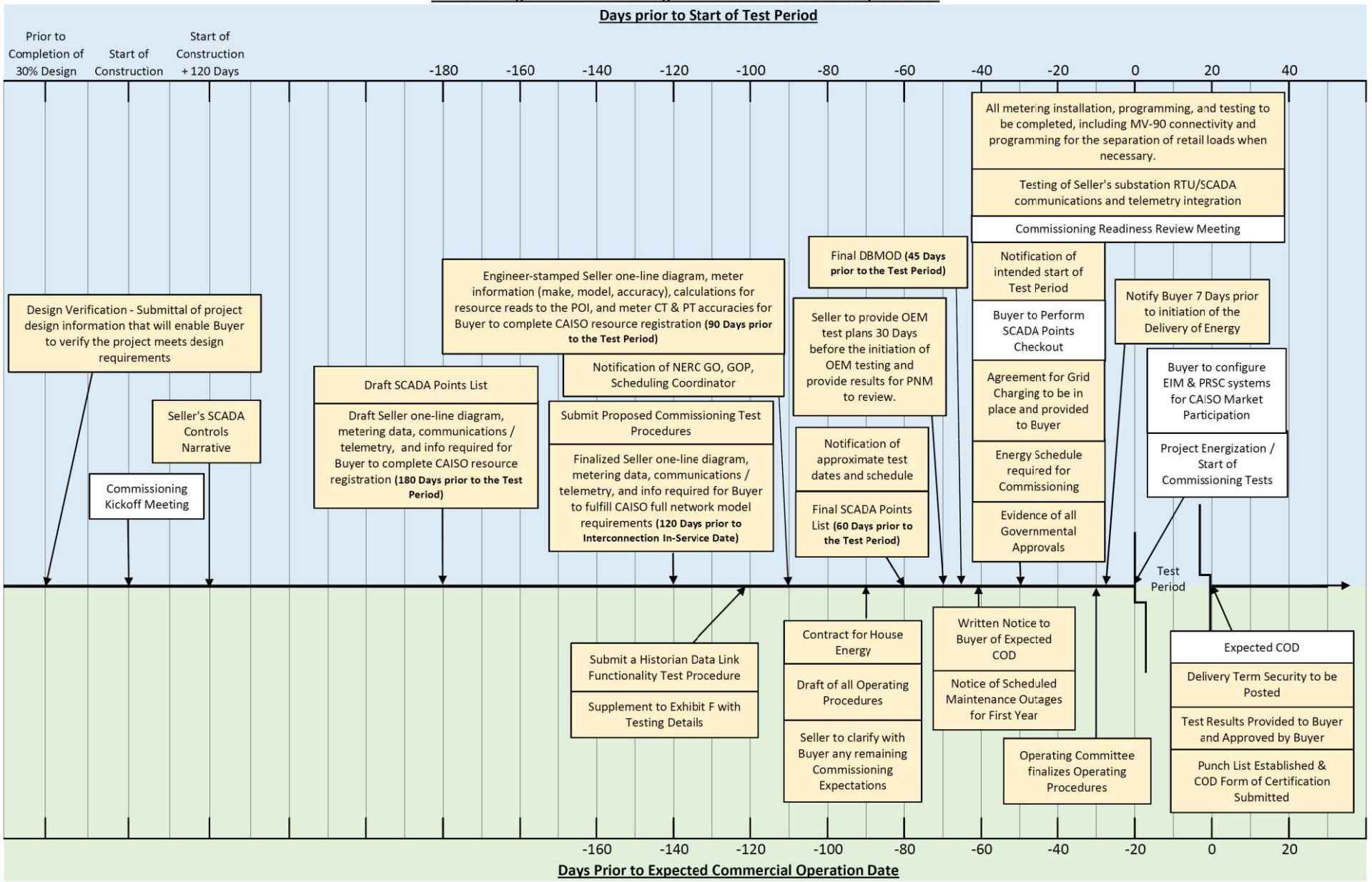
Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving PPA obligations, including metering, etc.	**Seller**	Generation Engineering	After completion of IFC design phase of project
Seller's SCADA Controls Narrative	Controls narrative detailing items related to SCADA and telemetry planning.	**Seller**	PowerOps	120 Days after Start of Construction
	Mutually agreed upon SCADA points list file delivered to PowerOps.	**Seller**	PowerOps	10 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled generation resource performance testing.	**Seller**	Buyer's Project Manager	Prior to the scheduled performance testing
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	Prior to the scheduled performance testing
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. 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. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period.

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Power Operations & WPM Systems configuration	EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent generation resources for CAISO market participation.	**PowerOps & WPM IT Support**	Seller	Prior to the beginning of the scheduled Test Period
Operating Procedure	Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering.	**Seller**	PowerOps	90 Days prior to the Commercial Operation Date
	An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system.	**Seller/Buyer**	Seller / PowerOps / Generation Engineering	30 Days prior to the Commercial Operation Date
OEM Test Plan	The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide Buyer with a certificate from an officer certifying that the testing required under the supply agreement with OEM was satisfactorily conducted.	**Seller**	Generation Engineering	Prior to declaring COD. Seller's officer certification may be included in the certification required by clause (g) of Commercial Operation.
Test Energy Plan & Schedule	Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated PPA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans.	**Seller**	Generation Engineering	Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period.
Commissioning Readiness Review Meeting	Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: 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.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Section 3.3 Commissioning.

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the PPA.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.
- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Historian Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the PPA) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

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.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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, etc.

    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.

    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.

    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.

    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.

    d. Telemetry for Seller's substation awareness shall include:

        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - Generation resource total gross values and total net values (in both

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

MW and MVAr)

- Gross and net values shall be provided for each resource registered with CAISO

- Point of Delivery values – MW, MVAr
- AGC setpoints for generation resource and voltage setpoint. As well as the feedback for those setpoints.

- Total real power target

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. DERMS Workbook inputs:
   a. Seller shall provide required information for the DERMS, including:
      - SCADA keys, resource characteristics, meteorology, etc.
      - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 the test evaluation results might 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

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

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 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.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT P

FORM OF LENDER CONSENT

CONSENT AND AGREEMENT

This Consent and Agreement (this "***Consent***") is made and entered into as of _____ __, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

RECITALS

_____ ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of a wind electric energy generating facility owned by Seller and located in ____, [STATE] (the "***Wind Project***").

Seller and Buyer have entered into that certain Power Purchase Agreement, dated as of ____ (as amended, restated, supplemented or otherwise modified from time to time, the "***PPA***"), relating to the energy generated by the Wind Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the PPA (the "***Pledged PPA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged PPA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged PPA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of wind energy facilities of comparable size to the Wind Project and the ability perform all aspects of the PPA; (d) has agreed in writing to be bound by the PPA and to assume all of Seller's obligations under the PPA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged PPA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of and after the date of assignment, the Facility Development Security Amount or the Operational

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

Security, as applicable, and (iii) Buyer has not terminated this PPA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged PPA (a "*Subsequent Seller*"), may be substituted for Seller under the PPA and Buyer shall recognize such Subsequent Seller as its counterparty under the PPA and, subject to all rights and remedies of Buyer under the PPA, continue to perform its obligations under the PPA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the PPA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the PPA. The transfer of the PPA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the PPA, Lender may cure such default by the deadline provided therefor in the PPA. Buyer will not terminate the PPA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the PPA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the PPA, (b) with respect to a default under Section 12.1(B)(8) or 22.21(A), (B), (C) or (E) of the Agreement, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the PPA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the PPA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (c) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the PPA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Wind Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. PPA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the PPA; provided that notwithstanding the foregoing, Buyer may terminate the PPA without Lender consent due to an uncured Event of Default under the PPA after the expiration of Lender's rights to cure under Section 4 hereof.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the PPA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the PPA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, Governmental Authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Start Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA.

8. Replacement Agreement. If the PPA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the PPA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the PPA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the PPA (other than the bankruptcy of Seller or a transfer of the Wind Project to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 18.6 (Assignment to Lenders) of the PPA).

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Lender and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the PPA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the PPA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

[BUYER]

By: _____
Name:_____
Title:_____

[LENDER]

By _____
Its _____

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the PPA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the PPA, as and when required under the PPA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the PPA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the PPA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the PPA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the PPA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the PPA. Seller shall have no rights against Buyer, under the PPA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

EXHIBIT Q

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Power Purchase Agreement, dated as of _____ (the "***PPA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a wind energy generating facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the PPA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the PPA have been duly authorized by all necessary action on the part of Buyer, (ii) the PPA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the PPA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the PPA is attached hereto as *Exhibit A* and the PPA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the PPA, Buyer is not in default of any of its obligations under the PPA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, Seller is not in default of any of its obligations under the PPA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, there are no material disputes between Buyer and Seller under the PPA, (viii) Buyer has not assigned any interest it has in the PPA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the PPA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, Governmental Authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the PPA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the PPA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Start Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the PPA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the PPA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

Docusign Envelope ID: 33887FD4-22D7-8D1B-82D7-1C359C68CAFD

IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

[BUYER]

By: _____
Name:_____
Title:_____

Cat Hills Energy Solar Facility Power Purchase Agreement

PNM Exhibit GBB-4

Is contained in the following 147 pages.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Execution Version

POWER PURCHASE AGREEMENT

CAT HILLS ENERGY SOLAR FACILITY

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

CAT HILLS ENERGY LLC

Dated as of April 30, 2026

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

POWER PURCHASE AGREEMENTCAT HILLS ENERGY SOLAR FACILITY 1
ARTICLE 1 Definitions and Rules of Interpretation.....1
1.1 Definitions.....1
1.2 Rules of Construction.....19
1.3 Interpretation with Interconnection Agreement.....19
1.4 Interpretation of Arrangements for Electric Supply to the Project.....20
ARTICLE 2 Term and Termination 21
2.1 Execution Date and Term 21
ARTICLE 3 Project Description.....21
3.1 Commercial Terms.....21
3.2 Project 22
3.3 Location 22
3.4 General Design of the Project.....22
3.5 Expected Commercial Operation Date 23
3.6 Extension of Expected Commercial Operation Date. 23
3.7 Delay Damages 24
3.8 Capacity Shortfall Damages. 24
3.9 Test Energy. 25
3.10 Notice of Commercial Operation.....25
3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation.....26
3.12 Eligible Change in Tariff. 26
ARTICLE 4 AGC; Curtailment.....26
4.1 AGC; Curtailment. 26
ARTICLE 5 Delivery and Metering 27
5.1 Delivery Arrangements. 27
5.2 Availability Reporting. 28
5.3 Electric Metering Devices.....28
5.4 Adjustment for Inaccurate Meters. 29
ARTICLE 6 Conditions Precedent 30
6.1 Conditions Precedent. 30
6.2 Notice.....30
ARTICLE 7 Sale and Purchase of Solar Energy Output.....30
7.1 Sale and Purchase of Solar Energy Output. 30
7.2 Title and Risk of Loss.....31

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

7.3 Future Environmental Attributes. 31
7.4 Scheduling. 31
7.5 Seller Forced Outages. 32
7.6 Availability Guarantee. 32
ARTICLE 8 Payment Calculations 32
8.1 Billing Components. 32
8.2 Payment Support Requirement. 33
8.3 Survival on Termination. 33
ARTICLE 9 Billing and Payment Procedures 33
9.1 Statements and Payment of Electricity Payments. 33
9.2 Miscellaneous Payments. 34
9.3 Currency and Method of Payment. 34
9.4 Default Interest. 34
9.5 Disputed Items. 34
9.6 Statement Errors. 34
9.7 Taxes. 35
9.8 Setoff and Payment Adjustments. 36
9.9 Netting. 36
9.10 Survival on Termination. 36
ARTICLE 10 Operations and Maintenance 36
10.1 Construction of the Project. 36
10.2 Commissioning and Testing. 38
10.3 Access to and Inspection of the Project. 38
10.4 Operating Parameters. 39
10.5 Operating Procedures. 39
10.6 Project Maintenance. 40
10.7 Sales to Third Parties. 41
10.8 Commissioning Performance Tests. 41
10.9 [Reserved]. 42
10.10 [Reserved]. 42
10.11 Weather Stations. 42
10.12 Monthly Operational Report. 43
ARTICLE 11 Environmental Attributes 43
11.1 Sale of RECs and Environmental Attributes. 43

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ARTICLE 12 Default and Remedies 44
12.1 Events of Default of Seller. 44
12.2 Events of Default of Buyer. 47
12.3 Damages Prior to Termination. 48
12.4 Termination. 49
12.5 Specific Performance. 49
12.6 Remedies Cumulative. 50
12.7 Waiver and Exclusion of Other Damages. 50
12.8 Payment of Amounts Due to Buyer. 50
12.9 Duty to Mitigate. 50
12.10 Security Rights. 50
ARTICLE 13 Contract Administration and Notices 50
13.1 Notices in Writing. 50
13.2 Representative for Notices. 51
13.3 Authority of Representatives. 51
13.4 Records. 51
13.5 Provision of Real-Time Data. 52
13.6 Examination of Records. 52
13.7 Exhibits. 53
13.8 Resolution of Issues. 53
ARTICLE 14 Force Majeure 53
14.1 Definition. 53
14.2 Notification Obligations. 55
14.3 Duty to Mitigate. 55
14.4 Force Majeure Event Occurring After Commercial Operation. 55
ARTICLE 15 Representations, Warranties and Covenants 56
15.1 Seller's Representations, Warranties and Covenants. 56
15.2 Buyer's Representations, Warranties and Covenants. 58
ARTICLE 16 Insurance 59
16.1 Evidence of Insurance. 59
16.2 Term and Modification of Insurance. 59
16.3 Endorsements and Other Requirements. 59
ARTICLE 17 Legal and Regulatory Compliance and Governmental Approval.....60
17.1 Applicable Laws. 60

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

17.2 Governmental Approvals. 60
17.3 NMPRC Approval. 60
17.4 Compliance with Reliability Standards. 61
17.5 Compliance Information. 61
ARTICLE 18 Assignment and Other Transfer Restrictions 62
18.1 No Assignment Without Consent. 62
18.2 Conditions on Transfers. 62
18.3 Change of Control. 63
18.4 Transfer Without Consent Is Null and Void. 63
18.5 Subcontracting. 63
18.6 Assignment to Lenders. 63
ARTICLE 19 Credit and Security Requirements 64
19.1 Security. 64
19.2 Form of Security. 64
19.3 Grant of Security Interest. 65
19.4 Use of Security. 65
ARTICLE 20 Indemnity; Insurance Proceeds 65
20.1 Indemnification. 65
20.2 Notice of Claims; Procedure. 66
20.3 Insurance Proceeds. 67
ARTICLE 21 Governmental Charges 67
21.1 Allocation of Governmental Charges. 67
ARTICLE 22 Miscellaneous 67
22.1 Waiver. 67
22.2 Fines and Penalties. 68
22.3 Standard of Review 68
22.4 Disclaimer of Certain Third Party Beneficiary Rights. 68
22.5 Relationship of the Parties. 68
22.6 Equal Employment Opportunity Compliance Certification. 69
22.7 Survival of Obligations. 69
22.8 Severability. 69
22.9 Complete Agreement; Amendments. 69
22.10 Binding Effect. 69
22.11 Headings. 69

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

22.12 Counterparts. 69
22.13 Governing Law. 70
22.14 Confidentiality. 70
22.15 Marketing Rights; Press Releases and Media Contact; Access. 72
22.16 Right to Mortgage. 73
22.17 Forward Contract and Master Netting Agreement. 73
22.18 Accounting Matters. 73
22.19 Telephone Recording. 75
22.20 Market Event 75

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBITS

Exhibit A	Description of Seller's Generation Facilities, Site Map and Project Schedule
Exhibit B	One-Line Diagrams of Project and Interconnection Facilities
Exhibit C	Description of Site
Exhibit D	Notice Addresses
Exhibit E	Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
Exhibit F	Commissioning Tests
Exhibit G-1	Insurance Coverages
Exhibit G-2	Form of Attestation and Bill of Sale
Exhibit H	Availability Guarantee
Exhibit I	Form of Seller Guaranty
Exhibit J	Commercial Operation Form of Certification
Exhibit K	Annual Degradation Guarantees
Exhibit L	Annual Generation Forecast
Exhibit M	PPA Functional Mapping
Exhibit N	Interconnection Metering Standard
Exhibit O	Commissioning and Testing Process

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

POWER PURCHASE AGREEMENT—CAT HILLS ENERGY SOLAR FACILITY

This Power Purchase Agreement (this "**PPA**")—Cat Hills Energy, as may be amended from time to time, is entered into this Thirtieth 30thDay of April, 2026 ("**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 Cat Hills Energy, LLC ("**Seller**"), whose principal place of business is 1435 Bedford Ave. Ste. C2 Pittsburgh, PA 15219. Buyer and Seller may be referred to in this 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 a solar energy electric generating facility with an expected total maximum power output of approximately one hundred fifty (150) MW ("**Project**"), as further defined herein and in Exhibit A; and

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

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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 accepts communications from the System Control Center and automatically adjusts the generation quantity of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

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

"**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 agreement and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

"**Buyer Costs**" means 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 agreement or entering into new arrangements which replace this agreement; and all reasonable attorneys' fees and expenses incurred by Buyer in connection with the termination of this agreement, to the extent such costs are not already included in Replacement Energy Costs.

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

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

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

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

"**Commercial Operation**" means that the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity have been constructed, commissioned, tested, and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) Seller has obtained all Seller required permits, required consents and Governmental Approvals required for Seller to operate the Project in accordance with Applicable

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Law are in full force and effect, (c) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Energy to the Point of Delivery in an amount at least equivalent to the Guaranteed Solar Capacity and is not in material breach of its Interconnection Agreement, (d) Seller has satisfactorily completed all of the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures, (e) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement, (f) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G-1 of this agreement, and (g) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

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

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

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

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

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

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

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

"**Compensable Curtailment**" means any curtailment of the Project, that is not a Seller Curtailment to the extent such curtailment during a calendar year has exceeded 21,000 MWh for each calendar year; *provided*, that for any period the Project is operating for less than a full calendar year, 21,000 MWh shall be pro-rated for the applicable portion of the calendar year in which the Project is operating within such calendar year and the determination of any Compensable Curtailment shall be based on such pro-rated amount.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

"**Creditworthy**" or "**Creditworthiness**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa3" or higher by Moody's, (b) "BBB-" or higher by S&P, and (c) "BBB-" or higher by Fitch.

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

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

"**DC**" means direct current.

"**Deemed Energy**" means the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Compensable Curtailment. Deemed Energy (MWh) shall be calculated using weather and pyranometer data from the meteorological station(s) at the Site for all or a portion of the Solar Units taken out of service due to the curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery.

The Parties agree that Deemed Energy shall be calculated for each interval in which curtailment occurs, defined as when

(a) the Actual Output ("AO") (i) is decreasing towards the Setpoint ("SP") at a rate greater than or equal to 10 MW per minute, or (ii) is at or below the Setpoint; and

(b) the Setpoint is less than both the Nameplate capacity and the Potential Power ("PP") output.

For each such interval, Deemed Energy shall be calculated as the difference between Potential Power and the greater of Actual Output or SP, converted to MWh. Any calculated values that are less than zero shall be excluded from the final Deemed Energy amount, such that Deemed Energy shall not be negative. This methodology ensures that only energy curtailed as a direct result of the curtailment instruction is included and that reductions in output attributable to other causes are not counted as Deemed Energy.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

$$Deemed\ Energy\ (MWh) = MAX\left(\frac{PP - MAX(AO, SP)}{12}, 0\right)$$

Where:

- PP represents the modeled available power based on weather and irradiance data;
- AO represents measured unit output;
- SP represents the applicable Setpoint; and
- Division by 12 converts five-minute intervals to MWh.

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

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

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

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

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

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

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

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

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

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

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

"**Downgrade Event**" is when a Person fails to maintain Creditworthiness.

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission System as set forth in Appendix A of the Interconnection Agreement.

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

"**Eligible Change in Tariff**" means any 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 Project.

"**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, in each case at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices.

"**Energy Storage Agreement**" means that certain Energy Storage Agreement between Cat Hills Energy LLC and Buyer dated as of April 30, 2026.

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

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

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

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

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

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

"**Fitch**" means Fitch Ratings Inc and any successor thereto.

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

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on 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 agreement or the procurement pursuant to this agreement of renewable energy and Renewable Energy Certificates and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation with regard to any Non-Governmental Compliance Obligations.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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 Solar Energy Output contemplated by this agreement, either directly or indirectly.

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

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

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

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or 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 (i) 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; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

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

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

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

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

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

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

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

"**Market Event**" has the meaning set forth in Section 22.20.

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

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

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

"**Monthly Billing Period**" means each Month during the Term in which Solar Energy Output has been generated by Seller for Buyer and delivered to the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

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

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

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

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

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

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

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

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

"**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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

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

"**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 ExhibitO.

"**Point of Delivery**" means the electric system point at which Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided by Seller to Buyer under this agreement. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this agreement. Energy delivered directly to the Energy Storage System shall be deemed to have been delivered at the Point of Delivery.

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

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

"**Project**" means Seller's solar energy generation facility with a nameplate capacity of one hundred fifty (150) MW at the Point of Delivery, located in Valencia County, New Mexico which will produce the Solar Energy Output made available to Buyer under this agreement, including one or more of Seller's Solar Units and Seller's Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this agreement, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, generators, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this agreement.

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

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

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

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

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

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

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating at least one hundred fifty (150) MW, in the aggregate, of solar generation and that is trained on the functionality and operation of the solar generation technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) Creditworthiness, and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project), or (b) is reasonably acceptable to Buyer.

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

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

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

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Renewable Energy Certificate**" or "**REC**" means a WREGIS Certificate as defined by the WREGIS Operating Rules and all Environmental Attributes associated with the generated energy. Seller must deliver RECs that are compliant with the requirements of the New Mexico Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended.

"**Replacement Energy Costs**" means the costs to Buyer reasonable and necessary to replace Solar Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein and based upon similar terms, conditions and performance standards outlined in this agreement) which Seller, in accordance with this agreement, was obligated to deliver to Buyer but failed to provide pursuant to this agreement. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs and Ancillary Services) delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs include (a) the reasonable amounts paid or incurred by Buyer

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

for transmission of replacement Solar Energy Output to the Point of Delivery and any associated transmission or distribution costs, (b) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (c) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this agreement.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**SCADA**" means the Project's remote supervisory control and data acquisition system, which includes all necessary components and contact points at the Project.

"**Scheduled Maintenance Outage**" means a time during which any portion of the Installed Solar Capacity is shut down or its output reduced to undergo scheduled maintenance in accordance with this agreement, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"**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 Curtailment**" means any time the Project is unable to deliver Energy to the Point of Delivery. It shall not be a Seller Curtailment due to actions of the Transmission Provider or if the Buyer is unable to receive otherwise available Energy at the Point of Delivery.

"**Seller Excused Hours**" means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Compensable Curtailment, (b) a Force Majeure Event, (c) any failure by Buyer to perform a material obligation under this agreement (other than due to a breach by Seller of its obligations under this agreement), or (d) weather conditions that exceed equipment manufacturer's specifications. Seller Excused Hours includes any curtailment that is not considered a Seller Curtailment.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Project to the Point of Delivery not associated with Seller Excused Hours.

"**Seller Guarantor**" means a Person that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit I.

"**Seller Permitted Transfer**" means any of the following: (a) the direct or indirect

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Ultimate Parent retains the ability to control the management and policies of Seller; (b) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction or (iii) a direct or indirect transfer to a Person of 50% or more of the shares of, or equity interests in, Seller; *provided*, that in the case of (b), (A) the transferee is a Qualified Transferee, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to any Seller's Lender and any subsequent assignee, designee or transferee thereof; provided that in the case of (c), (A) the Seller's Lender or its applicable assignee, designee or transferee is a Qualified Transferee and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Solar Energy Output) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; provided that if (a)(i) is less than (a)(ii), then zero, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this agreement, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this agreement or in entering into new arrangements which replace this agreement; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this agreement.

"**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 agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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 agreement. This agreement is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval. Adding or subtracting contiguous parcels of property or modifying the layout of strings or Solar Units within the Site will not be deemed a relocation requiring Buyer consent.

"**Solar Energy Output**" means Metered Output, Environmental Attributes (including but not limited to RECs) and Ancillary Services generated by the Project.

"**Solar Energy Output Payment Rate**" is defined in Section 3.1.

"**Solar Period Hours**" has the meaning set forth in Exhibit H.

"**Solar Unit(s)**" means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with a single inverter.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of generating units, including the Solar Units.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits and any other tax credits that are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority.

"**Term**" means the period during which this agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Termination Payment, as applicable.

"**Test Energy**" means any and all Solar Energy Output generated by the Project and delivered to Buyer during the Test Period.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date; provided, however, in no event shall the Test Period be longer than ninety (90) Days.

"**Test Rated Power**" has the meaning set forth in Section 10.8(B)(5).

"**Transmission Provider**" means the Person, designated agent, or third party acting in its transmission function capacity, owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means Exus North America Holdings LLC.

"**Weather Stations**" has the meaning set forth in Section 10.11(A).

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

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

"**WREGIS Qualified Reporting Entity**" as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS Certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules and WREGIS Terms of Use.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this agreement; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this agreement, the terms of this agreement shall take precedence.

(D) This agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this agreement and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this agreement 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 agreement. Unless expressly provided otherwise in this agreement, (i) where the agreement requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the agreement 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) All uses of the word "shall" in this agreement are to be interpreted as imperative and not permissive.

(H) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this agreement as a whole.

(I) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(J) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or."

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this agreement are not binding upon the Transmission Provider.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(B) Notwithstanding any other provision in this agreement, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this agreement. This agreement shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this agreement, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This agreement does not provide for the supply of retail electric power to the Project for any purpose ("**House Energy**"). Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter Energy generated and delivered by the Project in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this agreement are not binding upon the Local Provider. For purposes of this agreement, 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 agreement, 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 agreement. This agreement shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and for House Energy, backfeed power and station service power or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy, backfeed power and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This agreement shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Standard 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 agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this agreement, as each term is more fully set forth in this agreement:

COMMERCIAL TERMS

<table>
<tr><td colspan="2">Buyer: Public Service Company of New Mexico</td><td>Seller: Cat Hills Energy LLC</td></tr>
<tr><td colspan="3">Project: Cat Hills Energy</td></tr>
<tr><td colspan="3">Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided under this agreement, as further specified in the definition of “Point of Delivery”.</td></tr>
<tr><td>Delivery Term: 20 Commercial Operation Years</td><td colspan="2">Guaranteed Solar Capacity (MWs): 150 MW at the Point of Delivery</td></tr>
<tr><td>Product Type: Bundled Energy, Ancillary Services, RECs, and Environmental Attributes</td><td colspan="2">Solar Energy Output Payment Rate: $39.50/MWh, as further specified in Section 8.1(A).</td></tr>
<tr><td>Day(s) of week: Monday through Sunday, including NERC holidays</td><td colspan="2">Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time (“MST”)</td></tr>
<tr><td colspan="3">Guaranteed Start Date: One Hundred Fifty (150) Days after the Expected Commercial Operation Date</td></tr>
<tr><td colspan="3">Expected Commercial Operation Date: August 4, 2030</td></tr>
</table>

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

3.2 Project.

(A) Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

(B) Exhibit L identifies the expected first year total annual Energy to be delivered from the Project to the Point of Delivery and the corresponding capacity factor. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit A to this agreement. Exhibit A also contains a preliminary indication of the location of the Solar Units at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units and Interconnection Facilities at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the terms of this agreement and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Section 3.4(A) through Section 3.4(H), and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, 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 Interconnection Metering Standard from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) deliver Energy to Buyer, at the frequency specified by Buyer;

(F) be capable of both full load and idle operation over an ambient temperature range of -20°F to 110°F with the full range of relative humidity;

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of immediate disconnection remotely by the System Control Center;

The Project shall meet or exceed the recommended performance specifications of this Section 3.4(I) through Section 3.4(K), and as appropriately defined in IEEE Standard 2800-2022 Section 5, Section 6 and Section 7 at the Point of Delivery at all times.

(I) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Section 5 at the Point of Delivery;

(J) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Section 7 at the Point of Delivery, which shall be Category II minimum;

(K) 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

(L) No later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to, MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the Project. These controls shall include the following MESA-ESS modes or equivalent: (i) Active Power Smoothing, (ii) Automatic Generation Control, and (iii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Section 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this agreement, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 fifty (150) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event (together with a reasonable period for the affected Party to cure the Force Majeure Event as contemplated in Section 14.2) that delays construction or commencement of operation of the Project, (b) 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, or (c) other than in connection with or arising out of or relating to any Force Majeure Events or the interconnection of the Project, (i) if Seller notifies Buyer that Seller requires a performance from Buyer of Buyer's obligations under Exhibit F or Exhibit O, and (ii) Buyer does not timely perform such obligations, then on a day-for-day basis without an aggregate cap for the time period for the days of delay beyond Buyer's failure to perform in a timely manner to the extent such failure by Buyer to perform 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 the Expected Commercial Operation Date is extended pursuant to clause (a) or (b) of this Section for the maximum extension period set forth in the applicable clause, then Buyer will have the right to terminate this agreement without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity as of the determination date. The Delay Damages and, if applicable, Buyer Termination Payment subject to the limitations set forth in Section 12.3(B), are the Buyer's sole and exclusive monetary remedies, and Seller's sole and exclusive monetary liabilities, for Buyer's damages due to any delays in achieving, or failure to achieve, the Expected Commercial Operation Date.

3.8 Capacity Shortfall Damages. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Solar Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Six Hundred Thousand Dollars ($600,000) per MW of Delayed Capacity (as of the Guaranteed Start Date) ("**Capacity Shortfall Damages**"), as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed Solar Capacity, in which case the Guaranteed Solar Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

3.9 Test Energy.

(A) Seller shall, no later than forty-five (45) Days prior to the beginning of the Test Period, give written notice to Buyer of its NERC-registered Generator Owner and Generator Operator and designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Test Energy to Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of the Test Period.

(B) Seller shall retain Public Service Company of New Mexico as its WREGIS Qualified Reporting Entity to report to WREGIS under the WREGIS Operating Rules, unless agreed to otherwise by Buyer. Seller shall document and provide information required for the Qualified Reporting Entity to record RECs with WREGIS for the Test Energy generated prior to the Commercial Operation Date, including but not limited to production data and REC vintage. To the extent that Seller does not provide the necessary information or WREGIS does not provide WREGIS Certificates for the Test Energy, Seller shall (a) provide the RECs for a quantity of Energy equivalent to the quantity of such Test Energy or (b) reimburse Buyer for Buyer's reasonable and documented costs to replace RECs for a quantity of Energy equivalent to the quantity of such Test Energy.

3.10 Notice of Commercial Operation. Not less than sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. 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, and all the requirements of Commercial Operation have been met, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) Business Days after the date set forth in the Commercial Operation Notice. If Seller should determine that the

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this agreement is not prohibited by Applicable Law. Any breach of this Section 3.11 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.12 Eligible Change in Tariff. To the extent an Eligible Change in Tariff occurs between the Execution Date and one (1) year after NMPRC Approval that requires Seller to take additional actions to comply with Seller's obligations under this agreement and the costs associated with such actions, if they had been reasonably contemplated as of the Execution Date, increase Seller's costs by more than one and a half percent (1.5%) of the Contract Value at Contract execution, 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; Curtailment

4.1 AGC; Curtailment.

(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 capable of controlling each inverter. Beginning on the Commercial Operation Date and in response to directives from the System Control Center, Seller shall curtail the Project by use of the AGC system to effect Buyer's curtailment rights pursuant to this Section 4.1 for a Compensable Curtailment. 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.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to curtail the Project by use of the AGC system to effect a Compensable Curtailment pursuant to this Section 4.1(B). Seller shall ensure that, throughout the Delivery Term, the SCADA signal is

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations. If the Project's AGC set-point control is switched to Local status, Seller shall notify Buyer as soon as possible, detailing the rationale behind the change of status. Buyer maintains the right to enforce any curtailment as required for the protection of Buyer's systems. Such Compensable Curtailment rights do not provide the Buyer with any rights to direct the operation of the Project. For a Compensable Curtailment only, Buyer shall pay Seller an amount equal to the sum of the Solar Energy Output Payment Rate multiplied by the Deemed Energy associated with the number of Compensable Curtailment MWh. Buyer shall have the right to review and approve Seller's calculations and data utilized to develop the calculations of Deemed Energy. Deemed Energy results shall be trued up to correct for consistently biased calculation error based on assessment of normal operations periods before and after any given curtailment event.

(C) Seller shall reduce Solar Energy Output from the Project during and to the extent of any curtailment.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Seller shall be responsible for the costs of interconnection and costs required to deliver the Energy from the Project to Buyer at the Point of Delivery at the required voltage and frequency, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to the Metered Output up to the Point of Delivery. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the ESS, provided that delivery of Energy from the Project to the Transmission Provider's Transmission System shall take priority over Energy discharged from the ESS; and further provided, that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Energy discharged from the ESS shall take priority over delivery of Energy from the Project.

(B) [Reserved].

(C) On a Day-ahead basis, and no later than 4:00 a.m. MST, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer at the Point of Delivery. Each Friday, and no later than 12:00 noon MST, Seller shall provide Buyer a weekly Project generation forecast for the following week based on equipment availability. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond, including as necessary under participation in any regional market, including the EIM or the EDAM, if any.

(E) Seller shall provide to Buyer a one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of Exhibit O. 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.

(F) Seller shall be responsible for separately sourcing, metering and payment for an electrical power supply and associated power consumption for the Project House Energy.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this agreement shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices, including Primary Metering Devices and redundant metering ("**Back-Up Metering**") with independent current transformers ("**CTs**") and potential transformers ("**PTs**"), are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this agreement 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 agreement. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. 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 power and Energy, if supplied by the solar generation system. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided* that the Parties

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

may revise this loss adjustment based on actual experience. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, secondary, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A) and the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices or Secondary Metering are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device or Secondary Metering fails to register, or if the measurement made by an Electric Metering Device or Secondary Metering is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Parties shall first use Back-up Metering, followed by Secondary Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that such Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

ARTICLE 6
Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this agreement are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

(B) [RESERVED].

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; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this agreement.

ARTICLE 7
Sale and Purchase of Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this agreement, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Solar Energy Output delivered or deemed delivered by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase Solar Energy Output from the Project when and to the extent that (a) a Party's performance is excused by a Force Majeure Event, (b) a Compensable Curtailment is continuing, (c) a Seller Forced Outage is continuing, or (d) a Scheduled Maintenance Outage is continuing. Furthermore, and without limiting Section 10.7, Buyer shall not be required to receive or purchase Solar Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Solar Capacity as adjusted for losses to the Point of Delivery. In no event shall Seller have the right to procure any element of the Solar Energy Output from sources other than the Project for sale or delivery to Buyer under this agreement.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Energy from the Project up to delivery and receipt at the Point of Delivery, and Buyer shall be deemed to be in control of such Energy from the Project from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy from the Project shall transfer from Seller to Buyer at the Point of Delivery. Title related to any Environmental Attributes and Future Environmental Attributes shall transfer from Seller to Buyer upon generating of the Energy from the Project.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this agreement all right and title to such Future Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output, and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this agreement. 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 agreement, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements and any other applicable guidelines. Buyer shall control scheduling of Metered Output. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Solar Energy Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall provide Buyer with a good faith estimate of the hourly quantities of Solar Energy Output that Seller expects

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

to generate in the following Commercial Operation Year ("**Projected Schedule**"). Seller shall also provide estimates of the daily quantity of Energy to be delivered to Buyer. Seller shall configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than ten (10) MW per minute. Buyer is not required to provide this Project as a participating resource in a regional market.

(B) [RESERVED]

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Solar Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week. Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly quantities of Solar Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(D) If, at any time following submission of a good faith estimate as described in Section 7.4(C) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Seller Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

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

ARTICLE 8
Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly Solar Energy Output Payment. Subject to the provisions of this agreement, Buyer shall accept and pay for Solar Energy Output generated at the Project and

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to (i) the sum of (a) the aggregate amount of Solar Energy Output (MWh) delivered to Buyer at the Point of Delivery from the Project, plus (b) the Deemed Energy resulting from Compensable Curtailment, multiplied by (ii) the Solar Energy Output Payment Rate. The Solar Energy Output Payment Rate is the sole payment from Buyer to Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Solar Energy Output Payment Rate includes all Taxes.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this agreement consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this agreement for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, Monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this agreement (in Dollars) to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail, including an Attestation and Bill of Sale verifying the associated RECs and Environmental Attributes, if applicable, in the form of Exhibit G-2 ("**Attestation and Bill of Sale**").

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If any date on which any payment by Buyer would otherwise have been due

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this agreement, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this agreement shall be made in Dollars in immediately available cleared funds by wire transfer or electronic funds transfer into the relevant account specified in this agreement 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 agreement 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 lower of (i) the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) and (ii) the maximum interest rate allowed by Applicable Law ("**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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. A Party must notify the other Party of any error within three hundred sixty-five (365) Days of such error.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this agreement occur. The Parties further acknowledge their understanding that, under Applicable Law, no Gross Receipts Tax is applicable to the sale or delivery of Solar Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Solar Energy Output and on Buyer's payment and Seller's receipt of amounts due under this agreement provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Solar Energy Output to Buyer pursuant to this agreement.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, value 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 agreement and implement the provisions in this agreement in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this agreement or the Project that may be reasonably necessary in

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, including Section 9.9 below, all payments between the Parties under this agreement 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 agreement, including damages and other payments that are owed by a Party to the other Party pursuant to this agreement. Undisputed and non-offset portions of amounts invoiced under this agreement 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 agreement, 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 agreement.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this agreement 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, Applicable Law and this agreement. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer Monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key Project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 62-13-16 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 Day 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 62-13-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not 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 Solar Capacity, annual performance, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this agreement

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

and any documents ancillary hereto, neither this agreement nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall perform all commissioning and testing activities required to achieve Commercial Operation of the Project. Commissioning and testing activities shall be closely coordinated with the Buyer in good faith including but not limited to participation in a Commissioning Kickoff Meeting, performance and coordination of pre-commissioning activities beginning well before commissioning, participation in a Commissioning Readiness Review Meeting, and performance of commissioning tests required to achieve Commercial Operation ("**Commissioning Tests**") as further defined in Exhibit F. Seller's responsibilities, submittal requirements, timelines, and Buyer coordination requirements are as defined throughout this Agreement with further detail included in Exhibit O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least sixty (60) Days prior notice of the approximate test date and ten (10) Days prior notice of the Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this agreement, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this agreement, 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this agreement, 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 agreement, and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five-minute and real-time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet all requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this agreement. 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, Section 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 standards and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Days written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than thirty (30) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "**Operating Procedures**"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity and Solar Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this agreement, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this agreement. 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 calendar year. Should Buyer desire to change the reporting dates noted above, the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's generation, including the duration of such event. Each Scheduled Maintenance Outage will be subject to approval by Buyer, not to be unreasonably withheld. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Project's generation for any reason 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. Prior notice and Buyer approval shall not be required if such project maintenance is required for safety, Emergency Conditions, or compliance with Applicable Law and cannot be delayed until the next Scheduled Maintenance Outage.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Metered Output to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Commencing ninety (90) Days prior to the Expected Commercial Operation Date, Seller shall not sell or divert Solar Energy Output to any Person other than Buyer.

10.8 Commissioning Performance Tests. Commissioning Performance Tests shall be performed to verify compliance of the solar photovoltaic plant net AC capacity at the Point of Delivery with the Guaranteed Solar Capacity.

(A) Seller shall conduct a performance test prior to the Commercial Operation Date in accordance with applicable provisions of this Section 10.8 (the "**Commissioning Performance Test**"). The Commissioning Performance Test shall be determined to be satisfied when the Performance Test Ratio determined from the Commissioning Performance Test results in a value greater than or equal to 1.0 without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. In the case that the Performance Test Ratio determined from the Commissioning Performance Test is below 1.0, Capacity Shortfall Damages shall be due from Seller in accordance with Section 3.8 of this agreement. Capacity Shortfall Damages shall be applied to a Delayed Capacity value equivalent to the Guaranteed Solar Capacity multiplied by (1 - the as-tested Performance Test Ratio) and then multiplied by the Capacity Shortfall Damage rate identified in Section 3.8.

(B) The Commissioning Performance Test shall be conducted in accordance with ASTM E2848-13, except where deviations are provided in this Section 10.8(B).

(1) The reporting conditions will be developed in accordance with ASTM E2939-13 and will utilize site measured irradiance and ambient temperature data collected during the Commissioning Performance Test. The same reporting conditions will be used for computing the Model Rated Power and Test Rated Power using their respective regression equations.

(2) The Commissioning Performance Test period will include at least five (5) days of data and at least fifty (50) filtered data points.

(3) Model Rated Power and Test Rated Power shall account for losses to the Point of Delivery.

(4) The result from the Commissioning Performance Test is the ratio of Test Rated Power to Model Rated Power (the "**Performance Test Ratio**").

(5) "**Test Rated Power**" shall be the value produced by the regression of filtered site measured power and site measured weather data evaluated at the reporting conditions, adjusted by Seller for any unavailable equipment during the Commissioning

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Performance Test.

(6) "**Model Rated Power**" shall be the value produced by the regression of filtered Commissioning Performance Test PVsyst model power and filtered model weather data evaluated at the reporting conditions, adjusted by Seller for any unavailable equipment during the Commissioning Performance Test.

(7) The Model Rated Power will be calculated using the Commissioning Performance Test PVsyst model. Site measured POA irradiance will be used as the irradiance input to the Commissioning Performance Test PVsyst model.

(8) The PVsyst model utilized by Seller to predict the annual generation forecasts included in Exhibit L will be used as the PVsyst model for initial comparison to the actual site performance during the Commissioning Performance Test. Such PVsyst model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of the Commissioning Performance Test.

(C) Proposed terms associated with the guarantee, the required irradiance conditions, degradation allowances, modeling software inputs, and the methodology to be utilized for validation of the Guaranteed Solar Capacity shall be provided by the Seller and subject to mutual agreement of the Parties.

10.9 [Reserved].

10.10 [Reserved].

10.11 Weather Stations.

(A) Seller shall, at Seller's cost and no later than the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations ("**Weather Stations**") at the Project Site to monitor and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by Seller's engineer and agreed to by Buyer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall be of a grade equivalent to or better than those used in large-scale utility solar facility installations and include the capability for measuring, indicating, and recording ambient temperature, barometric pressure, wind speed and direction (instantaneous and average), and relative humidity. Seller shall submit to Buyer for review and approval, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules, current inverters, and other prominent features, as applicable. The Weather Stations shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to be maintained by Seller and to provide an unrestricted, real-time indication of all measured parameters to Buyer, and the data shall be available to Buyer via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted (subject to Seller's software licenses) real-time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

consent of Buyer, which shall not be unreasonably withheld. No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations. Data collected from the Weather Stations shall be utilized for determination of the Solar Performance Ratio, minimum solar irradiance for determination of system availability, and lost output due to curtailment or outages.

10.12 Monthly Operational Report. Not later than the fifteenth (15th) Day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Solar Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; Plane of Array irradiance data; 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. If any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

ARTICLE 11
Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer within ten (10) Days of the RECs being created in WREGIS and available for transfer. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within ten (10) Days after written notice from Buyer of such failure, and such failure is due to Seller's fault or negligence. The RECs and Environmental Attributes transferred under this agreement are bundled with the associated Energy.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this agreement, but not used, sold, assigned or otherwise transferred during the Term of this agreement. Buyer may, to the extent permitted by Applicable Law and this agreement, assign its rights, title and interest in and to any RECs and Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this agreement or any successor provision providing for a federal, state and/or

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(E) Seller shall, at its sole expense and prior to the commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the creation and tracking all Renewable Energy Certificates associated with all Metered Output, including Test Energy. Such actions shall include installing a meter on the low side of Seller's step-up transformer connected to the ESS and ensuring that all corresponding WREGIS Certificates are issued, tracked, and transferred to Buyer in a timely manner. The Parties acknowledge that Seller's registration of the Project with WREGIS requires achievement of the Commercial Operation Date. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account.

(F) Seller shall register the Project, as necessary, no later than thirty (30) Days after Buyer notifies Seller of the availability of such Environmental Attributes, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(G) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, which shall be Public Service Company of New Mexico, unless agreed to otherwise by Buyer.

(H) Neither Seller nor Buyer will have any liability to the other for any act, omission, misrepresentation, or breach (other than an act or omission due to the failure to pay fees, charges or expenses by the responsible Party), by an entity that certifies the characteristics or delivery of a REC, or the qualification of the Project as a renewable energy facility, under Applicable Law. The certifying entity may include a Governmental Authority, WREGIS or other generation information system, an independent auditor or other third party.

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this agreement (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 voluntarily taking advantage of any such law by answer or otherwise;

(4) Except during a Buyer Event of Default or during the period ending 90 (ninety) Days prior to the Expected Commercial Operation Date, the sale by Seller to a third party, or diversion by Seller for any use, of Energy, RECs or Ancillary Services committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this agreement or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this agreement, or other date mutually agreed to by the Parties in writing;

(7) Seller's failure to deliver RECs in accordance with the terms of this agreement on more than three occasions in any rolling thirty-six consecutive month period;

(8) The Project fails, after the third anniversary of the Commercial Operation Date, to maintain an Actual Availability Percentage of at least eighty percent (80%) over two (2) successive Commercial Operation Years; provided, however, for a single occurrence during the Term of this Agreement for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Actual Availability Percentage calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(8);

(9) The Project fails to obtain an Actual Availability Percentage of at least fifty-five percent (55%) over any Commercial Operation Year; provided, however, for a single occurrence during the Term of this agreement for a period of no longer than two hundred seventy (270) days, if the Project suffers a MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Actual Availability Percentage calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(9); or

(10) Seller's assignment of this agreement, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The failure of Seller to make any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

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

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer; or

(5) Seller's failure to deliver RECs in accordance with the terms of this agreement, unless remedied within five (5) Business Days of receipt of notice of such failure.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to deliver Solar Energy Output to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including the Interconnection Agreement) required to deliver Energy to the Point of Delivery;

(3) Seller's failure to make any payment due to Buyer under or in connection with this agreement (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 agreement);

(4) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this agreement;

(5) Seller's failure to maintain in effect any agreements required to deliver Solar Energy Output to the Point of Delivery;

(6) Seller's failure to comply with any other material obligation under this agreement, which would result in a material adverse impact on Buyer; or

(7) Seller fails to register the Project within WREGIS or should Future Environmental Attributes become available, fails to ensure timely registration of the Future

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Environmental Attributes in accordance with the terms of this agreement.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this agreement shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise; or

(4) Buyer's assignment of this agreement except as permitted in accordance with Article 18.

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this agreement) shall constitute an Event of Default upon the failure of Buyer to cure within thirty (30) Days of written notice from Seller to Buyer.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

under any other insolvency law against Buyer; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period; or

(2) Any representation or warranty made by Buyer in this agreement shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this agreement 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 agreement 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 agreement as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include an amount of cover damages equal to Replacement Energy Costs minus the product of (x) the quantity of Solar Energy Output so replaced and (y) the Solar Energy Output Payment Rate; *provided, however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer.* 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 Solar Energy Output 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 RECs, Environmental Attributes, and Future Environmental Attributes pursuant to this agreement, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this agreement for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes and any 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 Solar Energy Output produced by Seller following such Event of Default, plus, to the extent that Seller is unable to produce Solar Energy Output due to the Event of Default of Buyer, an additional quantity equal to the amount of Solar Energy Output that would have been produced by Seller absent such Event of Default of Buyer, each multiplied by the Solar Energy Output Payment Rate; provided that the foregoing amount shall be reduced by an amount equal to (A) the amount of any

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

revenues that Seller, using commercially reasonable efforts, is able to obtain by selling Solar Energy Output to a third party or into the market, less (B) Seller's costs and expenses incurred to effectuate any such sales, but in no event less than Zero Dollars ($0.00). Seller shall use commercially reasonable efforts to avoid, minimize or mitigate Seller's damages.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this agreement 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 agreement, 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 agreement 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 agreement. Upon the termination of this agreement 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. 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.

(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.

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

agreement.

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 agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this agreement, 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 agreement satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this agreement, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this agreement, 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 agreement.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this agreement, 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 agreement 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 agreement to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement. 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 agreement 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 agreement.

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 agreement, 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 agreement 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 agreement (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this agreement. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) monthly construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Solar Energy Output from, the Project in accordance with this agreement, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this agreement, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Solar Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the Solar Units.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only, and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this agreement, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

by Seller, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this agreement. 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 agreement.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, Exhibit C, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this agreement 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 agreement, 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. If 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. If 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**" means an event or circumstance that arises, after the Execution Date, that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this agreement. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic 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 Solar Energy Output of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws; (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 agreement beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of two hundred seventy (270) Days from its inception,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this agreement 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 agreement, 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 agreement (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. If any delay or nonperformance results from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this agreement 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 its effects impact the ability of:

(A) Seller to deliver Energy from the Project to the Point of Delivery, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours and Seller Curtailment in connection with the Solar Energy Output Payment;

(B) Buyer to receive Energy from the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours and Compensable Curtailment in connection with the Solar Energy Output Payment; or

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) both Buyer and Seller to perform the acts described in (A) and (B), then the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours and Seller Curtailment in connection with the Solar Energy Output Payment.

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this agreement.

(B) The execution, delivery, and performance of its obligations under this agreement 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 agreement;

(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 agreement; 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 agreement) 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 agreement.

(C) The obligations of Seller under this agreement are valid and binding obligations of Seller.

(D) The execution and performance of this agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have upon the generation of Solar Energy Output, good and marketable title to the RECs, Environmental Attributes, and Future Environmental Attributes.

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

(L) All right, title and interest in and to the RECs, Environmental Attributes and Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this agreement, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(P) This agreement does not provide for the transfer of the Project to Buyer at

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

any time during or after the Term.

(Q) This agreement does not grant Buyer an option to purchase the Project or any portion of the associated assets at any time during or after the end of the Term.

(R) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this agreement.

(B) The execution, delivery, and performance of its obligations under this agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this agreement;

(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 agreement; 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 agreement) 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 agreement.

(C) This agreement is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this agreement 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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 agreement 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 within thirty (30) Days of the annual insurance policy renewal or update or change of the insurance policy, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G-1 and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this agreement 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 agreement shall cover occurrences during the Term of this agreement on an "occurrence" basis. If any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G-1 within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this agreement, to request Seller to modify the insurance minimum limits specified in Exhibit G-1 in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

rights of subrogation against Buyer, and its respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this agreement 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-1 names Buyer and its respective 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-1 shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

ARTICLE 17
Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the agreement. 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 agreement to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of NMPRC Approval in connection with (i) the execution and performance of this agreement; and (ii) any waivers as set forth in Buyer's request for approval of this agreement (collectively, "**Requested Actions**"). An NMPRC order that defers action on cost recovery to a future case shall not be a material adverse financial order. In particular:

(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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order with no material adverse financial determination, which final written order is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, *provided* that each of Seller and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then this agreement shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer will amend this agreement to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this agreement. If the Parties are unable to mutually agree on any amendments to this agreement to address such NMPRC Approval order, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval by 11:59 P.M. of December 31, 2026 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, 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 agreement by Seller to an Affiliate of Seller; (ii) a Seller Permitted Transfer; or (iii) any assignment or transfer of this agreement 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), (ii) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) 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 agreement.

(B) Seller's consent shall not be required for any assignment of this agreement by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, or consolidation of Buyer or its parent corporation, *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 such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this agreement as and if required by NMPRC regulations and will resell the Solar Energy Output hereunder.

18.2 Conditions on Transfers. If the rights and interests of a Party in this agreement 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 agreement 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 agreement with the Affiliate as if such Person had been named under this agreement; *provided, however,* that the assigning Party shall not be released and

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement made without fulfilling the requirements of this agreement 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 agreement 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 and licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this agreement by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, (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 agreement; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this agreement 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 agreement 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 third-party 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 agreement.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this agreement or the revenues or proceeds therefrom in

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this agreement and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this agreement 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 Solar Capacity, (the "**Development Security**"), the first Fifty Thousand Dollars ($50,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Fifty Thousand Dollars ($50,000) per MW of which will be posted no later than eighteen (18) months prior to the Expected Commercial Operation Date. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed Solar Capacity (the "**Delivery Term Security**"). Seller shall replenish the Development Security and Delivery Term Security, as applicable, to such required amount within fifteen (15) Days after any draw by Buyer. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or Capacity Shortfall Damages and provided the Delivery Term Security. If no amounts are due and owing under this agreement and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) Day after termination of this agreement in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer:

(a) cash, (b) a Letter of Credit in form acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be 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 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) Days before expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or ten (10) Business Days if the only event is that the credit rating of the issuer bank of a Letter of Credit has fallen below the Issuer Minimum Requirements) (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this agreement, 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 the Development Security or Delivery Term Security, as applicable to recover any amounts owing to it arising out of this agreement, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this agreement. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this agreement, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this agreement.

ARTICLE 20
Indemnity; Insurance Proceeds

20.1 Indemnification.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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 ("**Buyer's Indemnified Persons**"), 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 ("**Seller's Indemnified Persons**"), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. If 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 to the applicable Governmental Authority all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Solar Energy Output that are imposed on the making available of Solar Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid to the applicable Governmental Authority all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Solar Energy Output that are imposed at and from the taking of Solar Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this agreement and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22
Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

enforce or insist upon compliance with or strict performance of any of the terms or conditions of this agreement, 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 agreement, 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 agreement, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this agreement shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this agreement whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this agreement, 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 agreement 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 agreement.

22.5 Relationship of the Parties.

(A) This agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this agreement 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 agreement, 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 agreement 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 agreement with a view toward effecting the purposes of this agreement 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 agreement constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this agreement, this agreement 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 agreement, 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 agreement are for ease of reference only and do not constitute a part of this agreement.

22.12 Counterparts. This agreement or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. The interpretation and performance of this agreement 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 agreement shall be brought in the United States District Court for the District of New Mexico; the Parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED**.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "**Receiving Party**" refers to the Party receiving information from the other Party.

(B) Other than in connection with this agreement, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, 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 agreement. 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). To the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this agreement 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 agreement (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic), and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf), or which concerns this agreement, the

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this agreement. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this agreement:

(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 Receiving Party's Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; 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 agreement, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this agreement, 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 agreement, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this agreement that relates solely to this agreement 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 agreement, 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, prior to disclosure, inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall immediately notify Buyer of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("**Data Breach**") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per Day, seven (7) Days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

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

(A) Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this agreement and the Environmental Attributes that are to be generated under this agreement and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this agreement and the creation, sale or retirement of such Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this agreement or as otherwise required by Applicable Law;

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

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 agreement, 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 agreement. 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, and Buyer shall be responsible for Seller's reasonable third-party costs associated with assisting Buyer in such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this agreement constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this agreement (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 agreement, 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 Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement 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 agreement. 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. If a dispute occurs 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 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this agreement, the Parties shall negotiate in good faith to amend this agreement to resolve such changes in order to effect performance of this agreement, at the least possible cost to the Parties, consistent with this agreement, including Section 7.4(A). To the extent that the Parties are unable to do so, either Party may initiate the process set forth in Section 13.8.

[Signature page(s) follow]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

IN WITNESS WHEREOF, the Parties have caused this agreement to be duly executed as of the date first above written. This agreement shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Laurie Williams B87ED845D25E4D9...

Name Laurie A Williams

Title Senior Vice President

CAT HILLS ENERGY LLC

By _____

Name Jim Spencer

Title President and Chief Executive Officer

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT A
DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE

1. Name of Seller's Project: Cat Hills Energy

2. Location: Valencia County, New Mexico

3. Owner (if different from Seller): Cat Hills Energy LLC

4. Operator: Exus North America Management Partners LLC

5. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Solar PV

   b. Total number of units at the Project: Approximately 37 Solar inverters

   c. Total nameplate capacity: Approximately 162.8 MWac

   d. Total Capacity at Point of Delivery: 150 MWac

   e. Additional technology-specific information: Approximately 315,160 photovoltaic modules

6. Project Schedule:

Key Milestone	Date
LGIA Execution	March 27, 2025
Major Equipment Supply Agreements Executed	February 1, 2027
Discretionary Permits	February 1, 2027
Close Financing	TBD
30% Design Complete	TBD
Start of Project Construction	TBD
First Major Equipment Delivered to Site	December 1, 2029
Interconnection In-Service Date	March 4, 2030
Commissioning Start Date	April 4, 2030

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Expected Commercial Operation	August 4, 2030
Guaranteed Start Date	January 1, 2031

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the agreement.

Site Map

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT B
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 Hidden Mountain 115kV.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT C
DESCRIPTION OF SITE[1]

[●]

SURVEYOR'S DESCRIPTION of: Valencia County, State of New Mexico, and being more particularly described as follows:

PARCEL 1:

Tract lettered "B" of CENTRAL NEW MEXICO RAIL PARK, as the same is shown and designated on the Summary Plat of said Subdivision, filed in the office of the County Clerk of Valencia County, New Mexico, on May 25, 2017, in Plat Cabinet "M", folio 342 as Document No. 201705337.

PARCEL 2:

Tracts numbered Two (2) and Three (3), of the LANDS OF HUNING LIMITED PARTNERSHIP, as the same are shown and designated on the Corrected Summary Plat filed in the office of the County Clerk of Valencia County, on February 10, 2021, in Plat Cabinet "M", folio 491 as Document No. 202102121.

The above described Tract of Land contains 900 acres more or less in area.

[1] NTD: To be updated ~60 days prior to COD.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT D
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

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

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

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

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:
Wells Fargo Bank
ABA# [●]
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

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

CAT HILLS ENERGY LLC

All Notices/Invoices:

Delivery Address:
Exus Renewables North America
1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Attn: John Markwell
Phone: 412-443-9618

With copy to:
Exus Renewables North America
1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Attn: Edith Webster-Freed
Phone: 929-715-3876

Mailing Address (if different from above):

Wire Transfer: TBD

With additional Notice of an Event of Default, termination and other legal notices to:
Attn: Edith Webster-Freed
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Phone: 929-715-3876

Attn: John Markwell
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Phone: 412-443-9618

Project Manager:
Exus Renewables North America
Attn: Brian Reindl
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

Public Service Company of New Mexico
Attention: Laurie Williams
414 Silver Ave. SW, MS Z220
Albuquerque, NM 87102
Telephone: (505) 241-0641

With a copy to:

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT E

SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
Village of Los Lunas Conditional Use Permit	Village of Los Lunas
National Historic Preservation Act Section 106 Finding of Eligibility, Consultation and Approval	New Mexico State Historic Preservation Office
Access/Driveway Permit	NMDOT/Valencia County/Village of Los Lunas
Building and Electrical Permit	Construction Industries Division on behalf of The State of New Mexico (NMCID)
NPDES Section 402 General Permit	United States EPA

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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT F
COMMISSIONING TESTING

Commissioning Tests

- String Insulation Resistance and Continuity Tests
- String V_{oc} measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- SCADA Functionality Test (or equivalent)
  - Automatic Generation Control (AGC) Functionality Test (or equivalent)
  - Voltage Setpoint Functionality Test
  - Historian Data Link Functionality Tests (See Section 3.4)
  - Project Reliability Test
    a. Commissioning Performance Test (See Section 10.8)

Commissioning Tests

- Commissioning Performance Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

A.1 **SCADA Functionality Test**

Purpose:

This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering ("**POE**"). This test must be performed prior to energization of the Project.

Procedure**:**

Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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.

A.2 **Automatic Generation Control (AGC) Functionality Test**

Purpose:

This test will demonstrate the ability of the Project to synch to AGC. This test will occur after the Project has energized.

System starting state:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

The Project will be in the on-line state and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure**:**

Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team four (4) to six (6) weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour operational activities.

Remote Mode Testing

Seller will set the Project to REMOTE mode, and verify the Project accepts AGC.

- Operator will send a setpoint to the Project
- Validate the Project responds to the setpoint
- Operator will send a setpoint above and/or below Project operation limits
  - Validate the Project sends alarms

Buyer's Operator will set the AGC Control mode to MARKET:

- Validate the Project responds to a DOT from CAISO
- Validate the setpoint and feedback matches the DOT

Buyer's Operator change the Project to MARKET in AGC

- Validate the Project changes the control mode

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG

- Hold for up to 10 minutes
- Validate the Project responds to ACE of +/- 10 MW

Local Mode Testing

On-site personnel change the Project to LOCAL mode

- Validate the Project changes from REMOTE to LOCAL mode
- Validate the Project follows gross MW requested on-site
- Validate the Project does not respond to setpoint changes

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

System end state:

The Project will be in the on-line state and with control mode set to LOCAL.

B. Voltage Setpoint Functionality Test

[LATER]

C. Buyer Data Link Functionality Test

The Buyer Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Project control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party) and assist as necessary to set up the Buyer Data Link.

Seller shall prepare and submit to Buyer a Data Link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Buyer Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Buyer Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

D. Project Reliability Testing

D.1 Operational Reliability

A. Purpose of Test

To demonstrate the short-term reliability of the Project.

B. Test Procedure

The Project shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

The operational reliability test shall be satisfied when the Project remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any material alarms, faults, trips, or manual intervention required.

E. Performance Testing

Purpose

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

This Section outlines the procedures and requirements for the Commissioning Performance Test ("**Performance Test**"), and will verify the plant is operating according to specification by achieving the Guaranteed Solar Capacity during the Commissioning Performance Test, under and pursuant to Section 10.8 of this agreement.

Definitions

"Performance Test PVsyst model" – The Performance Test PVsyst model including any post-processing that is based on the as-built drawings and adjusted for degradation, soiling, and albedo as discussed within this Exhibit F.

"Minimum Data Points" – Occurs when at least 150 allowable 5-minute qualifying data points meeting the requirements set forth in this Exhibit F are recorded after all data filtering has occurred as outlined herein.

"Model Rated Power" – The value produced by the regression of filtered PVsyst model power and filtered model weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Model Rated Power as calculated shall account for losses to the Point of Delivery and shall be determined using the procedures outlined herein. Parties shall work in good faith to adjust losses in the event they are impacted by additional project phases on a shared line. Regression of Model Rated Power data points shall be performed for the 30 Days centered about the Performance Test Measurement Period and for data points that are within +/- 20% of the Reporting Condition Total Plane of Array Irradiance.

"**Reporting Conditions**" – The Total Plane of Array Irradiance (POA_{total}), ambient temperature, and wind speed calculated by taking the median of the measured data set during the Performance Test Measurement Period will be used as the reporting conditions using the procedures outlined in general accordance with ASTM E2939 and this Exhibit F.

"**Performance Test Measurement Period**" – The period when the Performance Test is performed, which period shall be at least five (5) Days and shall continue for consecutive additional days until the Minimum Data Points have been met, which may be up to a total of 10 days, depending on weather conditions during the test. If after 10 days the Minimum Data Points have not been achieved, the data collected will be used provided at least 150 qualifying data points of 5 minute duration have been collected. Notwithstanding the above, if the Parties mutually agree that a sufficient quantity of qualifying data points have been collected during a test to determine an accurate test result, the duration of the Test and the quantity of required qualifying data points required herein may be reduced.

"**Performance Test Ratio**"– The Test Rated Power divided by the Model Rated Power, calculated to the nearest 0.1%.

"**Revenue Meter**" – The revenue meter for the Project shall be the revenue grade Primary Metering Device installed at the high side of each GSU, or as otherwise mutually agreed by the Parties.

"**Test Rated Power**" – The value produced by the regression of filtered site measured power and site measured weather data evaluated at the reporting conditions (RC), adjusted by Seller for any

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

unavailable equipment during the test. The Test Rated Power of the generating facility shall account for losses to the Point of Delivery and shall be calculated using the procedures outlined herein.

"**Total Plane of Array Irradiance (E_{TOTAL})**" – The sum total of the front plane of array irradiance and the rear plane of array irradiance multiplied by the Bifaciality Factor of the modules as shown in Equation 1 below. For Test Rated Power the E_{REAR} will also be multiplied by the Rear Shading Factor defined in Table 2 of Appendix 2 to account for loss between the rear POA sensor and the module.

Equation 1:

$$E_{TOTAL} = E_{POA} + E_{REAR} * \varphi * R_{SH}$$

Where

E_{POA} = Measured front side POA
E_{REAR} = Measured rear side POA
j = Bifaciality Factor as defined on the manufacturer's datasheet
R_{SH} = Rear shading factor

Performance Test Procedure

1. Battery system will be turned off over testing interval. In the event battery impacts performance or completion of test, parties will work in good faith to cease battery operations or modify procedure.
2. At least one hundred twenty (120) Days prior to the first day of the first Performance Test Measurement Period, a draft Performance Test plan, including a detailed Performance Test procedure shall be submitted to the Buyer by the Seller for Buyer's review and comment. The Performance Test procedure shall:
   2.1. be in general accordance with ASTM E2848 and ASTM E2939 or other ASTM standards as mutually agreed by the Parties;
   2.2. include the PVSyst model to be utilized for determination of Model Rated Power. The PVSyst model for the Commissioning Performance Test shall result in a total annual generation forecast that meets or exceeds the annual generation forecast included in Exhibit L;
   2.3. include the 8760 generation forecast resulting from the PVSyst model, including the following columns;
      2.3.1. Date & Time (MM/DD/YYYY hh:mm)
      2.3.2. Plane-of-Array Irradiance Front (Globinc, W/m2)
      2.3.3. Plane of Array Irradiance Rear (GlobBak, W/m2)
      2.3.4. Module Temperature (TArray, °C)
      2.3.5. Ambient Temperature (TAmb, C)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

2.3.6. Near Shadings Beam Loss (ShdBLss, W/m2)

2.3.7. Inverter Limitation due to Minimum Voltage (IL_Vmin, kW)

2.3.8. Inverter Limitation due to Maximum Power (IL_Pmax, kW)

2.3.9. Available Energy at Inverter Output (EOutlnv, kW)

2.3.10. Energy Injected into Grid (E_Grid, kWh)

2.4. include the linear regression coefficients for the full 8760 generation forecast; and

2.5. include a completed Appendix 2 of this Exhibit F, including the PVSyst model inputs and assumptions utilized in the PVSyst model.

Seller shall incorporate all of Buyer's reasonable comments into the final Performance Test plan and Performance Test procedure and resubmit the same for Buyer's confirmation of conformance with this Exhibit and applicable ASTM standards (such approval not to be unreasonably withheld or delayed).

3. The Seller shall give written notice to the Buyer in accordance with Section 10.2 of this agreement for the Commissioning Performance Test.
4. Seller shall perform the Performance Test in accordance with the final approved Performance Test procedures described within this Exhibit and any agreed modification thereof.
5. Performance Test procedures shall identify the final Reporting Conditions and Model Rated Power using the Performance Test PVsyst model, and data filters described below.
6. The following input parameters shall be measured during the Performance Test (collectively, the "Input Parameters"):

- Front Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the front side of the PV array in the Project during the qualifying data points. Any significant shading during any aggregation interval is cause to exclude that data record from the regression.
- Rear Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the rear side of the PV array in the Project during the qualifying data points.
- Ambient Temperature: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit F.
- Wind Speed: As recorded by the Project meteorological stations as defined in Appendix 1 to this Exhibit F.
- Soiling: Soiling loss in the Performance Test PVsyst model shall utilize the lesser of (i) the measured value during the test, (ii) values measured on site from mutually agreed PV array samples or (iii) a value of 1.25% or otherwise as mutually agreed by the Parties.
- Revenue Meter Energy Generation: Energy as recorded by the Revenue Meter and accounting for losses to the Point of Delivery during the Performance Test Measurement Period.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

- Inverter-Level Power Generation: AC output data for each inverter shall be provided for the purposes of identifying periods of inverter clipping.
- Inverter-Level Power Factor: Power factor output data for each inverter shall be provided for the purposes of identifying periods of inverters performing outside of the designed power factor threshold.

7. During the Performance Test Measurement Period, irradiance, power generation and other data shall be reported at no greater than one (1) minute intervals, consisting of averaged sampled data. All data shall be reported in time-synchronized intervals.
8. Data shall be averaged and filtered in accordance with the procedures below:
   8.1. Missing Data: Missing records shall be marked as missing with a non-numeric identifier. Missing records shall not have a value included in the analysis but shall be documented. At least 75% of sensors for each measured parameter must be operational to consider data points as valid.
   8.2. DAS Equipment Malfunction: Data records with invalid Input Parameters (e.g. all sensor readings reported as out of range by the DAS) shall also be marked as invalid. If more than a few averaging intervals in a data collection period are affected by DAS errors or equipment malfunctions, Seller shall investigate and resolve this condition prior to proceeding with the test.
   8.3. Below Minimum Irradiance: To avoid large uncertainty in results due to increased impact of variable losses at low irradiance, all records with a minimum Total Plane-of-Array Irradiance input parameter of 400 W/m^2 or less shall be marked as irradiance too low and the data will not be used in the test. This shall be in addition to the ASTM2848-9.1.6 Irradiance Out of Range requirement.
   8.4. Unstable irradiance: Irradiance measurements shall be deemed stable if i) all individual sensor readings are within 10% of the average of all the sensor readings and ii) the average of all sensor readings is not more than 50 Watts per meter squared greater or less than the previous interval reading. If both conditions above are not met, the irradiance will be deemed unstable, flagged and the data will not be used in the test. This filter may be adjusted to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.
   8.5. Inverter Clipping: Any intervals where the power output of one (or more) inverters is greater than 98.0% of the rated or programmed power limit. This data will be excluded from the test data.
   8.6. Meter Clipping: Any interval where the power output of the Revenue Meter is greater than 98.0% of the rated Point of Interconnection limit of the generating facility. This data will be excluded from the test data.
   8.7. Power Factor: Any intervals where the inverter power factor is less than ±0.95 will be excluded from the test data. This filter may be adjusted/removed to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

8.8. Array shading by internal (array self-shading) or external (nearby objects). A schedule of expected shade times shall be defined in the Performance Test procedures. This schedule may be altered during the Performance Test. Internal shading occurring during these shade intervals identified during testing shall be noted and considered as included in the design. Photographic evidence of array conditions shall be provided.

8.9. Array shading by environmental conditions (e.g. frost, snow or debris). Onsite observers shall record time intervals when such conditions exist as the Performance Test progresses. Photographic evidence of array conditions shall be provided and records occurring during these shade intervals identified during testing shall be marked as shaded and excluded from the test.

8.10. Wind Speed: Any intervals where average wind speed is greater than 15 meter per second, trackers go into a stow position or the panels are placed into hail stow due to a hailstorm will be excluded from the test data. This filter may be adjusted/removed to allow for more valid datapoints to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

8.11. Any intervals impacted by system outages will be excluded from the test data including a) curtailment of the Project, b) shut down for maintenance, c) disconnection of the Project from the grid, d) power regulation by the grid operator, e) a Force Majeure Event, or f) any time when the Project is not 100% available.

9. Data will be collected until, at a minimum, the Minimum Data Points have been achieved.

10. Using the data filtering described herein, calculate the linear regression coefficients and Test Rated Power.

11. Only data from records where input parameters are valid and within specified limits shall be used in computing capacity estimates.

12. Calculate the Performance Test Ratio using the calculated Test Rated Power and appropriate Model Rated Power. For clarity, the Test Rated Power and Model Rated Power calculations are performed in accordance with ASTM E2848 guideline, however, all procedures outlined herein will take precedence over the ASTM E2848 guidelines.

13. Seller shall not apply test tolerances or measurement uncertainty to the test data or model results. Seller shall strive to minimize test tolerance and measurement uncertainty.

Restrictions and exclusions that prevent or inhibit performance or completion of a scheduled test, as outlined in this procedure (i.e. too low irradiance over the specified interval, too many excluded intervals) shall result in rescheduling of the applicable Performance Test.

The Performance Test procedures provided by Seller to Buyer shall include (at a minimum) the following information:

- This test procedure
- Identification of key personnel and parties to be involved in the test
- The applicable Performance Test PVsyst model

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

    - For the purposes of the Performance Test, the Performance Test PVsyst model shall assume 100% availability.
    - Meteorological data
- Identification of the Project under test (at a minimum)
    - Number and make/model of PV modules
    - Array orientation
    - Location (latitude, longitude, street address)
    - Racking type and tilt
    - Tracker range of motion (if applicable)
    - Number and make/model of Inverters
    - Row to row spacing (ground coverage ratio)
- Identification of all data points to be monitored during the test
- The starting and ending dates of the scheduled Performance Test Measurement Period.
- Table of all sensors and transducers to be used, including cut sheets, calibration records, map of sensor locations with sufficient detail to allow observers to locate the sensors and transducers. This includes sensors required for all applicable Input Parameters (MET station sensors, inverters, and Revenue Meter).
- Calibration records for all instrumentation, sensors, and transducers used for the test verifying that such calibration has been performed within 12 months of the test or other such shorter period of time as may be recommended by the device manufacturer.
- All data identified in Appendix 2 to this Exhibit F.

Measured data is to be made available to the Buyer upon request during the Performance Test Measurement Period, for use in evaluating the progress of the Performance Test.

Performance Test Report
No later than fifteen (15) Business Days following the end of the Performance Test Measurement Period (as such may be repeated due to a re-test, if applicable), a Performance Test report will be submitted to the Buyer by the Seller. Buyer shall have ten (10) Business Days to accept or reject the results of the Performance Test report, and provide in writing any comments of Buyer on such Performance Test report. In the event that Buyer rejects all or any part of the draft Performance Test report, Seller shall, within five (5) Business Days thereafter address any comments of Buyer and re-submit the Performance Test report to Buyer. This procedure shall continue until Buyer accepts the Performance Test report. Any dispute regarding the results of the Performance Test or the Performance Test report shall be resolved as indicated in the Agreement.

The Performance Test report shall contain:
- The Performance Test procedures, including all requirements as outlined herein
- The actual start and end date/times of the Performance Test Measurement Period
- Parties present for the execution of the Performance Test

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

- Comments on environmental conditions during the Performance Test Measurement Period that affect the results of the test
- Performance model simulations, including all inputs, functional calculations and results
- Summary of test results
- Regression coefficients used to calculate Model Rated Power and Test Rated Power
- Comparison of test results with Performance Test Guarantee

All raw data used as input to the Performance Test shall be provided electronically (via CSV, XLS, or XLSX formats) to the Buyer with the Performance Test report.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Exhibit F
Appendix 1: Additional Requirements

Sensor Requirements

Front plane of array irradiance sensors shall be at a minimum "High Quality" classified pyranometer(s) as defined in ASTM 2848-A1.2 (Secondary Standard per ISO 9060). Pyranometers shall include device-specific characterization data that shall, at minimum, include cosine and temperature response. Alternative pyranometers may be used if necessary.

Pyranometers shall be used only within their valid calibration period and shall be cleaned at the start of the Performance Test Measurement Period and cleaned daily during the test if the Performance Test Measurement Period extends beyond one (1) week. Rear plane of array irradiance may be measured using either a high-quality reference cell (module) or a "High Quality" classified pyranometer(s) as defined in ASTM 2848-A1.2 (Secondary Standard per ISO 9060).

Measurement	Instrument Type	Test Function	Range	Accuracy
Plane of Array Irradiance	Front Facing Pyranometer Rear Facing Pyranometer	Primary for Performance Test	0 to 1600 W/m^2 285 to 2800 nm	±2.0% daily
Global Horizontal Irradiance	Pyranometer	Tertiary for Performance Test	0 to 1600 W/m^2 285 to 2800 nm	±2.0% daily
Ambient Air Temperature	Temperature Probe	Primary for Performance Test	-40°C to +60°C	±1°C
Wind Speed	Sonic Wind Sensor	Primary for Performance Test	0 – 60 m/s	±5%
PV Plant Power	PV Power Revenue Meter	Primary for Performance Test	0 to PV Power Plant size +20%	ANSI C-12.20
Inverter Power	Inverter Meter	Primary for Performance Test	determined from inverter data sheet	determined from inverter data sheet
Soiling Loss	Soiling Stations In-Field IV Curve	Primary for Performance Test Secondary for Performance Test	0 to 100%	

Multiple Measurements

Multiple Measurements shall be recorded for all environmental data throughout the Site in order to capture the operating conditions for all regions of the array.
Below are the main sensors to be used in the Performance Test:

- Front and rear plane of array irradiance (POA): Plane of Array readings shall be averaged from sensors installed.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

- Ambient Air Temperature: Ambient temperature readings shall be averaged from sensors installed.
- Wind Speed: wind speed sensors shall be averaged from sensors installed.
- Soiling Station: At least four soiling stations, averaged readings will be used for multiple stations.
- Albedometer: At least four albedometers, averaged readings will be used for multiple sensors.
- Inverter Meter: The power and power factor reading for each inverter.
- PV Plant Meter: The power reading of the Revenue Meter.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Exhibit F - Appendix 2: Performance Test PVsyst model and Reporting Conditions Definition

Performance Test PVsyst model

The requirements for the Performance Test PVsyst model to be used for evaluating the Test Rated Power is detailed in this Exhibit. This section outlines all input parameters required to create the PVsyst simulation, in the event that PVsyst electronic project files are no longer available. This section shall be populated and submitted with the Performance Test procedures.

The Performance Test PVsyst model and the post-processed 8760 generation forecast accounting for any losses outside of the model shall be included within this Exhibit. Post-processed losses shall be specifically identified in the 8760 forecast.

PVsyst model Files

Table 2-1 below provides the file names for all model files necessary to run the PVsyst simulation in the PVsyst version specified in the subsequent section. Seller shall provide all Performance Test PVsyst model files to the Buyer including all files required to recreate the PVsyst modeling files including .ond, .pan, .shd, .met, .prj and .vc files. The PVsyst version, report, and output 8760 based on the specified TMY Meteorological data source shall be provided.

Table 2-1: PVsyst File Names

PVsyst File Type	File Name
Project	To be provided
Variant 1	To be provided
Variant 2	To be provided
Site	To be provided
Meteorological	To be provided
Panel	To be provided
Inverter	To be provided

PVsyst Input Parameters

This section documents all PVsyst inputs and assumptions. Table 2-2 below provides many of the PVsyst inputs required in the simulation.

Sixty (60) Days prior to performance testing of any portion of the solar project, the corresponding PVSyst model and inputs with the resultant 8760 generation forecast shall be submitted with the test procedure for Buyer review. Testing and approval for Commercial Operation will require that a PVSyst model and associated inputs and results be provided that represents the capability to fulfill a minimum total annual generation of [*] GWh per year (as identified in Exhibit L) on a P50 probability basis as adjusted year over year for any applicable degradation.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Seller shall provide justification and supporting documentation for all of the circuit ohmic losses, inverter losses, transformer losses, and auxiliary loads identified in Table 2-2.

Table 2-2: PVsyst Input Parameters

Input Parameter	Value	Comment
PVsyst Software Version		
Transposition Model		
Meteorological File		
Latitude / Longitude		
Altitude [m]		
Array Orientation (PVsyst Field Type)		
Tilt		
Azimuth		0° is due South
Tracker Backtracking		
Min / Max Rotation Angle		
Number of sheds		
Ground Cover Ratio (GCR)		
Pitch [m]		
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		
Inverter Loss		
Heat Transfer: Constant loss factor		
Heat Transfer: Wind loss factor		
DC circuit ohmic loss at STC		
Module Bifaciality Factor		From datasheet (not PAN file)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Input Parameter	Value	Comment
Module Quality		
Mismatch [%]		
LID – Light Induced Degradation [%]		
Soiling Loss [%]		
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		
Annual Average		
Incidence Angle Modifier Factors or ASHRAE b0 value		
Rear Transparency		
Rear Shade Loss		
Rear Mismatch		
Module Mounting Height		
Monthly Surface Albedo		
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		
Annual Average		
Auxiliary Loads [%]		

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Input Parameter	Value	Comment
Nighttime Loads [%]		
AC circuit ohmic loss at STC [%]		
AC circuit MV ohmic loss at STC		
External MV Transformer No Load Loss [%]		
External MV Transformer Full Load Loss [%]		
AC circuit HV ohmic loss at STC		
External HV Transformer No Load Loss [%]		
External HV Transformer Full Load Loss [%]		

Additional Losses (Post-Processed Loss)

There are multiple losses associated with an operating Project that may not be accounted for in PVsyst. Auxiliary load consumption shall be separately accounted for in the test results. Treatment of any additional adjustments impacting the Primary Metering Device in the event they impact the overall results of the test shall be as mutually agreed by the Parties.

Reporting Conditions Identification

The Reporting Conditions are to be specified based on the measured data set. The following procedure is recommended for identifying Reporting Conditions.

1. The Reporting Conditions shall be determined based on the measured data set. Data records shall include the measured Total Plane of Array irradiance (E_{Total}), ambient temperature and wind speed input parameters, as well as any auxiliary parameters necessary for marking data records according to the primary data exclusion criteria.
2. Apply the primary data exclusion criteria identified in Section 8 of this Exhibit F to the measured data records.
3. Grouping the remaining data records, compute the median values of E_{total}, ambient air temperature, and wind speed. The reporting condition for E_{total} irradiance shall not be less than 500 W/m², unless otherwise agreed to by the Parties.
4. Round median E_{total} irradiance to the nearest integer W/m², median temperature to the nearest °C, and median wind speed to the nearest 0.1 m/s. The calculated values represent the Reporting Conditions.

Model Rated Power Identification

The Model Rated Power is a power output value estimated at the Revenue Meter, adjusted for

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure shall be used by the Seller to calculate the Model Rated Power values.

1. To Calculate the Model Rated Power value, update and verify the applicable Performance Test PVsyst model includes the following parameters:
    a. Availability and Curtailment Losses shall be assumed 0%
    b. Update soiling and albedo values
2. The Performance Test PVsyst model hourly output, after post-processing, must contain at a minimum the plane of array irradiance, the ambient temperature, wind speed, inverter energy output, modeled power generation, shade loss, and clipping loss (GlobInc, Globbak, TAmb, WindVel, EOutInv, Egrid, POI Limited, ShdBLss, and IL Pmax) respectively. For clarity:

$$\text{Model } E_{total} = \text{GlobInc} + \text{Globbak}*BF$$

    BF = Module Bifaciality Factor of the bifacial modules used in the Performance Test
3. Procure data records from the Performance Test PVsyst model. PVsyst model
4. Apply the data exclusion criteria identified in Section 8 of this Exhibit F to the simulation data records.
5. Calculate the regression coefficients for the Performance Test Measurement Period from filtered data with a Total Plane of Array Irradiance within +/-20% of the Total Plane of Array Irradiance Reporting Condition.
6. Calculate Model Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation below:

$$P_{RC} = E_{RC}(a_1 + a_2 \cdot E_{RC} + a_3 \cdot T_{RC} + a_4 \cdot v_{RC})$$

    Where:
    P_{RC} = Rated Power
    E_{RC} = Total Plane of Array Irradiance Reporting Condition
    T_{RC} = Temperature Reporting Condition
    v_{RC} = Wind Speed Reporting Condition
    a1 to a4 = Regression coefficients

Test Rated Power Identification

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

The Test Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure will be used by the Seller to calculate the Test Rated Power values.

1. Procure measured data records including the meter output and inverter output data
2. Calculate the Test E_{TOTAL}

   $$\text{Test } E_{total} = \text{GlobInc} + \text{Globbak}*\text{BF}*\text{RearShade}$$

3. Apply the data exclusion criteria identified in Section 8 of this Exhibit F to the measured data records.
4. Compute regression coefficients for the Performance Test Measurement Period.
5. Calculate the Test Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Exhibit F-Appendix 3: PVsyst – Simulation Report

[To be provided.]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT G-1
INSURANCE COVERAGES

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

A. Workers' Compensation Insurance that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million Dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Network Security and Privacy Liability. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

F. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

G. 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 Seller 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 Seller 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 Seller 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

force or through an extended reporting period. Seller shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Seller 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT G-2

FORM OF ATTESTATION AND BILL OF SALE

Pursuant to WREGIS, _____ ("Seller") hereby sells, transfers and delivers to Buyer the RECs and Environmental Attributes associated with the generation of Energy at the Project, as detailed in the Power Purchase Agreement between the Parties dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

_____
Name of Renewable Energy Facility

_____	_____	_____
Fuel Type	Maximum Power Output (MW)	Operation Date
_____	_____	_____
Dates		MWh generated
_____, 20___		_____

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents, to the best of its knowledge, as follows:

1. to the best of its knowledge, the information provided herein is true and correct;
2. its sale to Buyer is its one and only sale of the RECS and Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such RECS and Environmental Attributes;
3. the Project identified above produced the number of MWh above during the period indicated above;
4. Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and
5. Seller owns the _____. [Name of the Renewable Energy Facility]

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the above referenced Energy.

Contact Person: _____
Phone: _____; Fax: _____
[Seller]
Signed: _____
Name: _____
Title: _____
Date: _____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT H
AVAILABILITY GUARANTEE

Section 1. Definitions.

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

"**Actual Solar Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Solar Available Hours for all Solar Units that were part of the Project at the beginning of the relevant Commercial Operation Year for all Daylight Intervals, divided by (ii) the sum of all Solar Period Hours in the relevant Commercial Operation Year for all Solar Units that were part of the Project on the Commercial Operation Date.

"**Actual Solar Energy Output**" means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

"**Aggregate Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Report**" has the meaning set forth in Section 2(5) of this Exhibit.

"**Daylight Interval**" means each hour where plane of array irradiance conditions are 50 W/m2 or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

"**Guaranteed Solar Availability Percentage**" has the meaning set forth in Section 2(1) of this Exhibit.

"**Solar Availability Damages**" has the meaning set forth in Section(2) of this Exhibit.

"**Solar Available Hours**" means for each Solar Unit, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Solar Period Hours in such Commercial Operation Year, minus (b) the aggregate Solar Unavailable Hours for such Solar Unit in such Commercial Operation Year, plus (c) the aggregate Solar Excused Hours for such Solar Unit in such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

"**Solar Excused Hours**" means, in any Commercial Operation Year, the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

available, but for less than the full amount of its installed capacity, the Solar Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

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

"**Solar Unavailable Hours**" means those hours a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Energy to the Point of Delivery. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is unavailable, but for less than the full amount of its installed capacity, the Solar Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

Section 2. Solar Availability Guarantee.

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

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

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at Sixty Thousand Dollars ($60,000) per MW of Guaranteed Solar Capacity ("**Annual Availability Damages Cap**") and in the aggregate at a value equivalent to One Hundred Fifty Thousand Dollars ($150,000) per MW of Guaranteed Solar Capacity ("**Aggregate Solar Availability Damages Cap**") over the Term of the agreement.

4. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed Solar Availability Percentage shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Sections 12.1(A)(8) and 12.1(A)(9), if and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies, including for Events of Default that may have caused Seller to fail to meet the Solar Guaranteed Availability Percentage.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the agreement and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ATTACHMENT 1 TO EXHIBIT H

EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES

I. Example of Actual Solar Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 50 Solar Units were part of the Project.

The Solar Units had the following operating characteristics:

		Hours	Solar Units Affected	Solar Unit Hours
	Solar Period Hours ("PH")	8,760	50	438,000
	Solar Unavailable Hours ("UH")	500	10	5,000
	Solar Excused Hours ("EH")			1,000

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

Sum of Available Hours = PH – UH + EH: 434,000 = 438,000 – 5,000 + 1,000

Actual Solar Energy Availability Percentage

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

(a) Sum of Solar Available Hours: 434,000 hours

(b) Sum of Solar Period Hours: 438,000 hours

(c) Actual Solar Availability Percentage: (Sum of Solar Available Hours/Sum of Solar Period Hours) x 100 = (434,000/438,000) x 100 = 99.1%

II. Example of Availability Damages

Example of Solar Availability Damages based on the following assumed facts:

(a) Seller's Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.

(b) Seller's Actual Solar Availability in Commercial Operation Year 4 = 85%.

(c) Solar Energy Output Payment Rate = $20.00

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(d) Actual Solar Energy Output = 130,000 MWh

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

Solar Energy Output Payment Rate x (Guaranteed Solar Availability Percentage in Commercial Operation Year 4 — Actual Solar Availability Percentage for Commercial Operation Year 4) x (Actual Solar Energy Output for Commercial Operation Year 4 ÷ Actual Solar Availability Percentage for Commercial Operation Year 4 x Guaranteed Solar Availability Percentage for Commercial Operation Year 4) = Solar Availability Damage:

$20.00 x (.90 - .85) x (130,000 ÷ .85 * .90) = $137,647.06

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT I

FORM OF SELLER GUARANTY

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

RECITALS:

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

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

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

* * *

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 [●] duly organized and validly existing under the laws of the State of [●] and has the [●] 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 [●]proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES.

(a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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*):

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

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

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

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

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

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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.

* * *

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

[●]
By:_____

Name:_____

Title:_____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT J
COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by _____("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Solar Units with an aggregate capacity of at least ninety percent (90%) of Guaranteed Capacity have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects.

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__.

Cat Hills Energy LLC	**[Licensed Professional Engineer]**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
	Date: _____
	License Number and LPE Stamp: _____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT K
ANNUAL DEGRADATION GUARANTEES

Test at Beginning of Commercial Operation Year	Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity)	Maximum % Degradation from Prior Year Actual Degradation
1 - Commissioning Test	100.00%	0.00%
2	[●]%	[●]%
3	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 98.5]%	[●]%
4	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 98%	[●]%
5	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 97.5%	[●]%
6	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 97%	[●]%
7	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 96.5%	[●]%
8	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 96%	[●]%
9	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 95.5%	[●]%
10	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 95%	[●]%
11	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 94.5%	[●]%
12	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 94%	[●]%
13	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 93.5%	[●]%

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Test at Beginning of Commercial Operation Year	Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity)	Maximum % Degradation from Prior Year Actual Degradation
14	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 93%	[●]%
15	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 92.5%	[●]%
16	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 92%	[●]%
17	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 91.5%	[●]%
18	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 91%	[●]%
19	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 90.5%	[●]%
20	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed [●]%) and [●]% or (ii) 90%	[●]%

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT L
ANNUAL GENERATION FORECAST

The following represents the annual P50 forecast of net, AC generation delivered to the Point of Delivery. On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

Month	On-Peak Energy Delivered (MWh)	Off-Peak Energy Delivered (MWh)
January	18,817	2,788
February	21,474	3,579
March	29,686	5,709
April	34,861	5,364
May	37,765	7,400
June	38,504	6,527
July	38,418	5,764
August	35,133	6,758
September	31,664	4,871
October	26,877	3,982
November	18,859	3,772
December	18,353	2,719
Total Annual	350,411	59,233
Total Combined Annual	409,644	
Annual Capacity Factor	31.2 %	

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT M
PPA FUNCTIONAL MAPPING

The Project's NERC verified PPA Generator Owner, PPA Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Scheduling Coordinator Contact (SCC)				

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT N
INTERCONNECTION METERING STANDARD

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT O
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 agreement and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the agreement and complete all testing as defined in Exhibit F of the agreement.

Figure 1 is for reference purposes only.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the agreement.

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	Email
Eric Meadors	PNM	Generation Contracts & Development	2401 Aztec Rd NE Albuquerque, NM 87107	Contract Manager	(505) 241-2179	(505) 801-7803	Eric.Meadors@txnmenergy.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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 modeling for functionality required for the participating resource schedule coordination (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.

- "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- **"Project Manager"** – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.

- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the generation systems. The OEM shall define and execute all OEM-required equipment and system testing.

- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.

- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

    - Balancing Authority (BA)
    - 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:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

TABLE 2: PRE-COMMISSIONING REQUIREMENTS

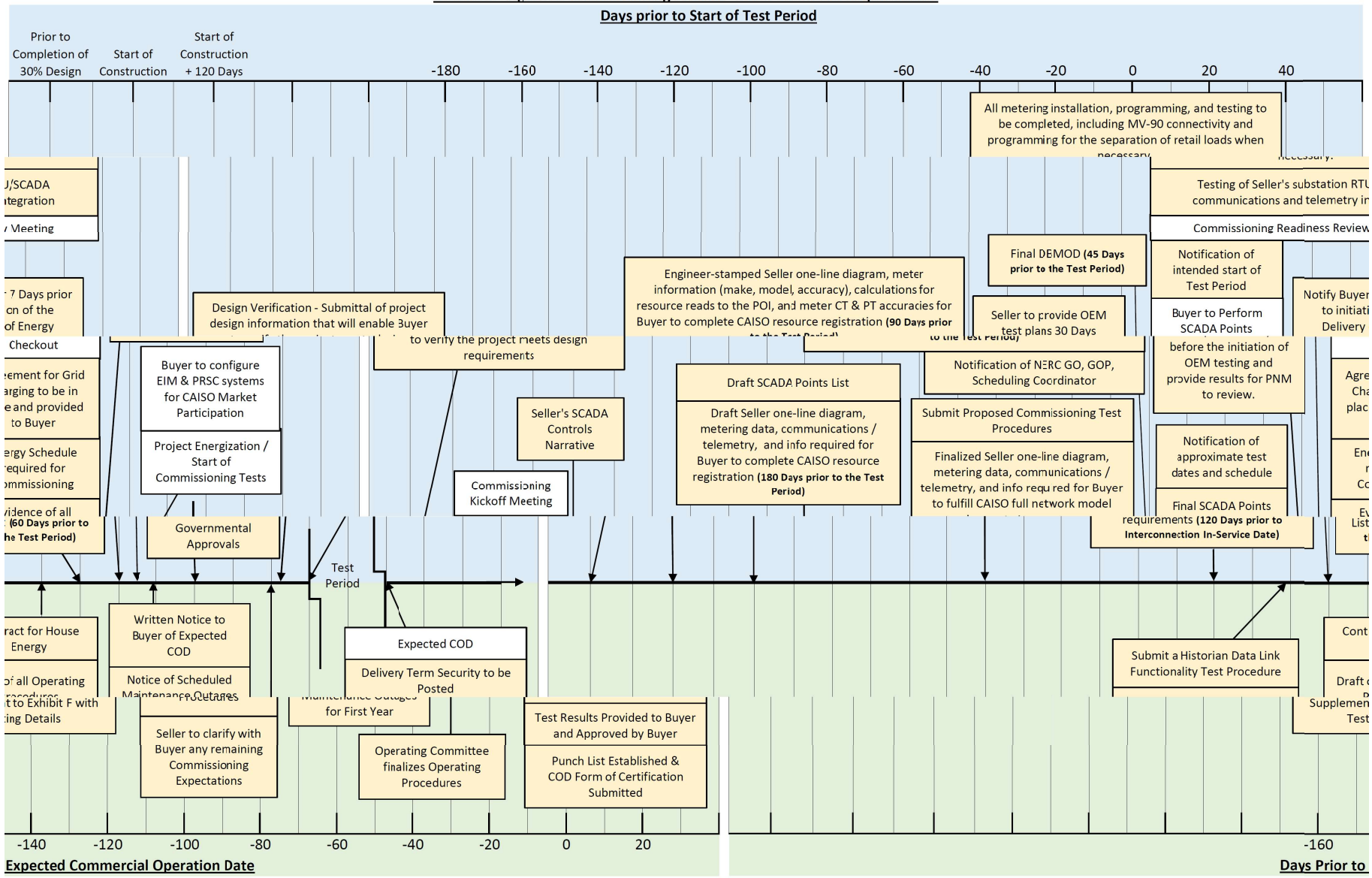
Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving agreement obligations, including grid forming inverters, metering, etc.	**Seller**	Generation Engineering	After completion of IFC design phase of project
Seller's SCADA Controls Narrative	Controls narrative detailing items related to SCADA and telemetry planning.	**Seller**	PowerOps	120 Days after Start of Construction
	Final DB Mod file delivered to PowerOps.	**Seller**	PowerOps	10 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled generation resource performance testing.	**Seller**	Buyer's Project Manager	Prior to the scheduled performance testing
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	Prior to the scheduled performance testing
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. 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. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Power Operations & WPM Systems configuration	EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent generation resources for CAISO market participation.	**PowerOps & WPM IT Support**	Seller	Prior to the beginning of the scheduled Test Period
Operating Procedure	Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering.	**Seller**	PowerOps	90 Days prior to the Commercial Operation Date
	An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system.	**Seller/Buyer**	Seller / PowerOps / Generation Engineering	30 Days prior to the Commercial Operation Date
OEM Test Plan	The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide 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 PPA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans.	**Seller**	Generation Engineering	Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period.
Commissioning Readiness Review Meeting	Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: Attachment 2: Commissioning Readiness Review	**Generation Engineering**	Seller, PowerOps	30 Days prior to the beginning of the scheduled Test Period

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements



accordance with the above schedule requirements

Seller shall submit and be responsible for all items indicated in gold in a
Seller shall otherwise support and participate in all identified activities.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

- 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 agreement) 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Section 3.4 Final Requirements Prior to COD.

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, etc.

    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.

    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.

    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.

    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.

    d. Telemetry for Seller's substation awareness shall include:

        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - Generation resource total gross values and total net values (in both

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

MW and MVAr)

- Gross and net values shall be provided for each resource registered with CAISO

- Point of Delivery values – MW, MVAr
- AGC setpoints for generation resource and voltage setpoint. As well as the feedback for those setpoints.

- Total real power target

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. DERMS Workbook inputs:
   a. Seller shall provide required information for the DERMS, including:
      - SCADA keys, resource characteristics, meteorology, etc.
      - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 the test evaluation results might 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 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.

Cat Hills Energy LLC Energy Storage Agreement

PNM Exhibit GBB-5

Is contained in the following 131 pages.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ENERGY STORAGE AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

CAT HILLS ENERGY LLC

Dated as of April 30, 2026

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ENERGY STORAGE AGREEMENT 1
ARTICLE 1 Definitions and Rules of Interpretation 1
1.1 Definitions 1
1.2 Rules of Construction. 19
1.3 Interpretation with Interconnection Agreement. 20
1.4 Interpretation of Arrangements for Electric Supply to the Project. 21
ARTICLE 2 Term and Termination 21
2.1 Execution Date and Term. 21
ARTICLE 3 Project Description 22
3.1 Commercial Terms. 22
3.2 Project. 22
3.3 Location. 22
3.4 General Design of the Project. 23
3.5 Expected Commercial Operation Date. 24
3.6 Extension of Expected Commercial Operation Date. 24
3.7 Delay Damages. 25
3.8 ESS Capacity Shortfall Damages 25
3.9 Test Period. 25
3.10 Notice of Commercial Operation. 26
3.11 Charging. 26
3.12 ESS Unit Capabilities. 26
3.13 ESS Non-Performance Liquidated Damages. 27
3.14 Guaranteed ESS Roundtrip Efficiency Payment. 27
3.15 Prohibition Against Acquisition, Importation, Transfer, or Installation. 27
3.16 Eligible Change in Tariff. 28
ARTICLE 4 AGC; ESS Curtailment 28
4.1 AGC. 28
4.2 ESS Curtailment 28
ARTICLE 5 Delivery and Metering 28
5.1 Delivery Arrangements. 29
5.2 Availability Reporting. 29
5.3 Electric Metering Devices. 29
5.4 Adjustment for Inaccurate Meters. 31
ARTICLE 6 Conditions Precedent 31

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

6.1 Conditions Precedent. 31
6.2 Notice. 32
ARTICLE 7 Sale and Purchase of Product 32
7.1 Sale and Purchase of Product. 32
7.2 Title and Risk of Loss. 32
7.3 Future Environmental Attributes. 32
7.4 Scheduling. 33
7.5 Forced Outages. 33
ARTICLE 8 Payment Calculations 33
8.1 Billing Components. 34
8.2 Payment Support Requirement. 34
8.3 Survival on Termination. 34
ARTICLE 9 Billing and Payment Procedures 35
9.1 Statements and Payment of Electricity Payments. 35
9.2 Miscellaneous Payments. 35
9.3 Currency and Method of Payment. 35
9.4 Default Interest. 35
9.5 Disputed Items. 36
9.6 Statement Errors. 36
9.7 Taxes. 36
9.8 Setoff and Payment Adjustments. 37
9.9 Netting. 37
9.10 Survival on Termination. 37
ARTICLE 10 Operations and Maintenance 38
10.1 Construction of the Project. 38
10.2 Commissioning and Testing. 39
10.3 Access to and Inspection of the Project. 39
10.4 Operating Parameters. 40
10.5 Operating Procedures. 40
10.6 Project Maintenance. 42
10.7 Sales to Third Parties. 43
10.8 Monthly Operational Report. 43
10.9 [Reserved]. 43
ARTICLE 11 Future Environmental Attributes 43

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

11.1 Sale of Future Environmental Attributes. 43
ARTICLE 12 Default and Remedies 44
12.1 Events of Default of Seller. 44
12.2 Events of Default of Buyer. 46
12.3 Damages Prior to Termination. 47
12.4 Termination. 47
12.5 Specific Performance. 48
12.6 Remedies Cumulative. 48
12.7 Waiver and Exclusion of Other Damages. 49
12.8 Payment of Amounts Due to Buyer. 49
12.9 Duty to Mitigate. 49
12.10 Security Rights. 49
ARTICLE 13 Contract Administration and Notices 49
13.1 Notices in Writing. 49
13.2 Representative for Notices. 50
13.3 Authority of Representatives. 50
13.4 Records. 50
13.5 Provision of Real-Time Data. 51
13.6 Examination of Records. 51
13.7 Exhibits. 52
13.8 Resolution of Issues. 52
ARTICLE 14 Force Majeure 52
14.1 Definition. 52
14.2 Notification Obligations 54
14.3 Duty to Mitigate. 54
14.4 Force Majeure Event Occurring After Commercial Operation. 54
ARTICLE 15 Representations, Warranties and Covenants 55
15.1 Seller's Representations, Warranties and Covenants 55
15.2 Buyer's Representations, Warranties and Covenants. 57
ARTICLE 16 Insurance 57
16.1 Evidence of Insurance. 58
16.2 Term and Modification of Insurance. 58
16.3 Endorsements and Other Requirements. 58
ARTICLE 17 Legal and Regulatory Compliance and Governmental Approval 59

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

17.1 Applicable Laws. 59
17.2 Governmental Approvals. 59
17.3 NMPRC Approval. 59
17.4 Compliance with Reliability Standards. 60
17.5 Compliance Information. 60
ARTICLE 18 Assignment and Other Transfer Restrictions 61
18.1 No Assignment Without Consent. 61
18.2 Conditions on Transfers. 61
18.3 Change of Control. 61
18.4 Transfer Without Consent Is Null and Void. 62
18.5 Subcontracting. 62
18.6 Assignment to Lenders. 62
ARTICLE 19 Credit and Security Requirements 63
19.1 Security. 63
19.2 Form of Security. 63
19.3 Grant of Security Interest. 64
19.4 Use of Security. 64
ARTICLE 20 Indemnity; Insurance Proceeds 64
20.1 Indemnification. 64
20.2 Notice of Claims; Procedure. 65
20.3 Insurance Proceeds. 66
ARTICLE 21 Governmental Charges 66
21.1 Allocation of Governmental Charges. 66
ARTICLE 22 Miscellaneous 66
22.1 Waiver. 66
22.2 Fines and Penalties. 66
22.3 Standard of Review 67
22.4 Disclaimer of Certain Third Party Beneficiary Rights. 67
22.5 Relationship of the Parties. 67
22.6 Equal Employment Opportunity Compliance Certification. 67
22.7 Survival of Obligations. 68
22.8 Severability. 68
22.9 Complete Agreement; Amendments. 68
22.10 Binding Effect. 68

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

22.11 Headings. 68
22.12 Counterparts. 68
22.13 Governing Law. 68
22.14 Confidentiality. 69
22.15 Marketing Rights; Press Releases and Media Contact; Access. 71
22.16 Right to Mortgage. 71
22.17 Forward Contract and Master Netting Agreement. 72
22.18 Accounting Matters. 72
22.19 Telephone Recording. 73
22.20 Market Event 74

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBITS

Exhibit A	Description of Seller's Energy Storage Facilities, Site Map, and Project Schedule
Exhibit B	One-Line, Communications and Telemetry Diagrams of Project and Interconnection Facilities
Exhibit C	Description of Site Parcel Survey
Exhibit D	Notice Addresses
Exhibit E	Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
Exhibit F	Commissioning and Annual Testing
Exhibit G	Insurance Coverages
Exhibit H	Roundtrip Efficiency Guarantee
Exhibit I	Availability Calculations
Exhibit J	Form of Seller Guaranty
Exhibit K	Commercial Operation Form of Certification
Exhibit L	ESS Operating Restrictions
Exhibit M	ESS Functional Mapping
Exhibit N	Interconnection Metering Standard
Exhibit O	Preparation for Commissioning

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (this "**ESA**"), as may be amended from time to time, is entered into this Thirtieth (30th) Day of April, 2026 ("**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 Cat Hills Energy LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 1435 Bedford Ave. Ste. C2 Pittsburgh, PA 15219. 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 agreement.

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

"**Actual Charge Ramp Rate**" means the maximum rate that the ESS can change its input power, as determined pursuant to Exhibit F.

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Actual Discharge Ramp Rate**" means the maximum rate that the ESS can change its output power, as determined pursuant to Exhibit F.

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

"**Actual System Latency**" means the time measured between when the control signal is received by the ESS and when the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as determined pursuant to 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 agreement 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 accepts communications from the System Control Center and 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, Black Start Capability, 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

"**Black Start Capability**" means that the ESS inverters shall be provided with the ability to form an islanded grid inside the Project while disconnected from the Point of Delivery if Buyer instructs Seller to reserve stored energy for this function. The ESS will not be designed to provide grid forming capability below a zero percent (0%) ESS State of Charge. Buyer may enhance the Black Start Capability after the Execution Date if (a) Buyer provides specifications for an enhanced Black Start Capability, (b) the specifications are within the capabilities of Seller's ESS integrated equipment and controls system supplier, and (c) Buyer pays all costs associated with upgrading the ESS to the enhanced Black Start Capability specifications as verified by an independent engineer. Upon the satisfaction of all of (a), (b) and (c) in the preceding sentence, Seller shall upgrade the ESS to the enhanced Black Start Capability specifications within eighteen (18) months.

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

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

"**Buyer Costs**" means 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 agreement or entering into new arrangements which replace this agreement; and all reasonable attorneys' fees and expenses incurred by Buyer in connection with the termination of this agreement, to the extent such costs are not already included in Replacement ESS Costs.

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

"**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

"**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 direct or indirect 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 the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the Commissioning Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this agreement; 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 K, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation 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 Energy Payments expected to be made in each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination) which is to be determined in accordance with the calculation in Section 8.1(A). All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Creditworthy**" or "**Creditworthiness**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa3" or higher by Moody's, (b) "BBB-" or higher by S&P, and (c) "BBB-" or higher by Fitch.

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

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

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

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

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

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

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

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

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

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

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

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

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

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

"**Downgrade Event**" is when a Person fails to maintain Creditworthiness.

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

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

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

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. 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, in each case at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Point of Delivery, 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, in compliance with the ESS Unit Capabilities, and subject to the terms and conditions of this agreement.

"**Energy Storage System**" or "**ESS**" means the battery arrays, battery system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's charging, discharging, delivery or storage of electricity from renewable energy resources in contrast with the storage 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

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

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Curtailment**" has the meaning set forth in Section 4.2.

"**ESS Energy Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Energy Payment Rate**" means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

"**ESS Meter Energy In**" has the meaning set forth in Exhibit F.

"**ESS Meter Energy Out**" has the meaning set forth in Exhibit F.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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(A).

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the 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.

"**Fitch**" means Fitch Ratings Inc and any successor thereto.

"**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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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 agreement or the procurement pursuant to this agreement 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 contemplated by this agreement, 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**" means discharge of the ESS at Guaranteed PMAX for four (4) consecutive hours.

"**Guaranteed ESS Roundtrip Efficiency**" means, with respect to a Commercial Operation Year, the applicable percentage set forth in Exhibit H.

"**Guaranteed Frequency Response Capability**" 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**" has the meaning set forth 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 as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

water, groundwater, and air, including but not limited to any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

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

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

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

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

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

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

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

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

"**Licensed Professional Engineer**" means an independent, professional engineer that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(4) Clean Energy Associates, or (5) Leidos Engineering, LLC; and (B) reasonably acceptable to Buyer (provided that at least one of the foregoing (A)(1)-(5) shall be reasonably acceptable to Buyer), licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

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

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

"**Market Event**" has the meaning set forth in Section 22.20.

"**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**" or "**Monthly**" means a calendar month.

"**Monthly Billing Period**" means each Month during the Term 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" means the maximum amount of electrical energy, expressed in megawatt-hours (MWh), that the Energy Storage System is designed to store and make available for discharge, net of auxiliary and parasitic loads, based on the manufacturer's rated specifications and measured at the applicable metering point.

"**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).

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

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

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

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

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

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

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

"**PCS**" or "**Power Conditioning System**" means the Energy Storage System power conditioning system utilized to convert electric power from one form to another (AC to DC, DC to AC, and/or between different voltage levels), and to condition the power quality to what is needed by the interconnected systems.

"**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 ExhibitO.

"**Point of Delivery**" means the electric system point at which (i) Buyer delivers Charging Energy to Seller, (ii) Seller delivers Discharge Energy to Buyer and (iii) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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 agreement.

"**Project**" means Seller's energy storage facility, located in Valencia County, New Mexico, with a designed maximum power charge and discharge capability of 150 MW for four (4) hours (600 MWh), as identified and described in Article 3 and Exhibit A to this agreement, 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 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 agreement.

"**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(A).

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

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

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) Creditworthiness, and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project), or (b) is reasonably acceptable to Buyer.

"**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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Replacement ESS Costs**" means the costs to Buyer reasonable and necessary to replace the Product (including Future Environmental Attributes and Ancillary Services) as defined herein and based upon similar terms, conditions and performance standards outlined in this agreement which Seller, in accordance with this agreement, would have made available to Buyer but failed to so provide pursuant to this agreement. 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 (including Future Environmental Attributes and Ancillary Services) delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs 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 agreement.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**SCADA**" means the Project's remote supervisory control and data acquisition system, which includes all necessary components and contact points at the Project.

"**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 agreement, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"**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'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 agreement or in entering into new arrangements which replace this agreement; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this agreement.

"**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product as a result of: (a) a Force Majeure Event that affects the ability of Buyer to deliver Charging Energy or to receive Discharge Energy at the Point of Delivery, (b) any failure by Buyer to perform a material obligation under this agreement (other than due to a breach by Seller of its obligations under this agreement), (c) failure of Buyer to provide Charging Energy, (d) Emergency Condition, (e) Buyer's dispatch of the Project which is not in accordance with the Operating Parameters, (f) an ESS Curtailment or (g) the time that the Project is required to be offline or at limited capacity as a result of (i) annual required testing in accordance with this agreement or (ii) additional testing requested by Buyer in accordance with this agreement.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Product that would otherwise be made available from the Project at the Point of Delivery not associated with Seller Excused Hours.

"**Seller Guarantor**" means a Person that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit J.

"**Seller Permitted Transfer**" means any of the following: (a) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Ultimate Parent retains the ability to control the management and policies of Seller; (b) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction or (iii) a direct or indirect transfer to a Person of 50% or more of the shares of, or equity interests in, Seller; *provided*, that in the case of (b), (A) the transferee is a Qualified Transferee, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to any Seller's Lender and any subsequent assignee, designee or transferee thereof; provided that in the case of (c), (A) the Seller's Lender or its applicable assignee, designee or transferee is a Qualified Transferee and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e.,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, 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.

"**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 agreement. This agreement is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval. Adding or subtracting contiguous parcels of property will not be deemed a relocation requiring Buyer consent.

"**State of Charge**" or "**SOC**" means the level of charge as reported by the ESS, expressed in percent of Nameplate Energy Capacity.

"**Supplemental State Tax Incentives**" means any 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 State Tax Incentives, and any other tax credits that are or will be generated by or attributable to the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority.

"**Term**" means the period during which this agreement 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 transmission function capacity, owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means Exus North America Holdings LLC.

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

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

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 agreement unless otherwise stated.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this agreement; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this agreement, the terms of this agreement shall take precedence.

(D) This agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this agreement and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this agreement 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 agreement. Unless expressly provided otherwise in this agreement, (i) where the agreement requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the agreement 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) All uses of the word "shall" in this agreement are to be interpreted as imperative and not permissive.

(H) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this agreement as a whole.

(I) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(J) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or."

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this agreement are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this agreement, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this agreement. This agreement shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this agreement, the Transmission Provider shall be deemed to be a separate entity and separate contracting party

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This agreement does not provide for the supply of retail electric power to the Project for any purpose ("House Energy"). Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter the Charging Energy and Discharge Energy of the ESS in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this agreement are not binding upon the Local Provider. For purposes of this agreement, 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 agreement, 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 agreement. This agreement shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Energy and for House Energy, backfeed power and station service power or (ii) a single Electric Metering Device that separately measures Energy and House Energy, backfeed power and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This agreement shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Standard 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 agreement

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this agreement, as each term is more fully set forth in this agreement:

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	**Seller:** Cat Hills Energy LLC
Project: Cat Hills Energy	
Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this agreement, as further specified in the definition of "Point of Delivery."	
Delivery Term: 20 Commercial Operation Years	**Product Type:** Bundled Energy Storage Services, Ancillary Services, Future Environmental Attributes, ESS Capacity, and other ESS Unit Capabilities
ESS Energy Payment Rate: $16.05/MWh, as further specified in Section 8.1(A).	
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: August 4, 2030	

3.2 Project. Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit A to this agreement. Exhibit A also contains a preliminary

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

indication of the location of the ESS at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS and Interconnection Facilities at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the terms of this agreement and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Section 3.4(A) through Section 3.4(H), and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, 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 Interconnection Metering Standard from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply 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 immediate disconnection remotely by the System Control Center;

The Project shall meet or exceed the recommended performance specifications of this Section 3.4(I) through Section 3.4(K), and as appropriately defined in IEEE Standard 2800-2022 Section 5, Section 6 and Section 7 at the Point of Delivery at all times;

(I) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Section 5 at the Point of Delivery;

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(J) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Section 7 at the Point of Delivery, which shall be Category II minimum;

(K) 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

(L) 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 Section 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this agreement, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis (a) up to a maximum of one hundred fifty (150) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event (together with a reasonable period for the affected Party to cure the Force Majeure Event as contemplated in Section 14.2) that delays construction or commencement of operation of the Project, (b) 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, or (c) other than in connection with or arising out of or relating to any Force Majeure Events or the interconnection of the Project, (i) if Seller

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

notifies Buyer that Seller requires a performance from Buyer of Buyer's obligations under Exhibit F or Exhibit O, and (ii) Buyer does not timely perform such obligations, then on a day-for-day basis without an aggregate cap for the time period for the days of delay beyond Buyer's failure to perform in a timely manner to the extent such failure by Buyer to perform 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 the Expected Commercial Operation Date is extended pursuant to clause (a) or (b) of this Section for the maximum extension period set forth in the applicable clause, then Buyer will have the right to terminate this agreement without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed ESS Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed ESS Capacity**" is an amount equal to the difference between the Guaranteed ESS Capacity and the ESS Capacity as of the determination date. The Delay Damages and, if applicable, Buyer Termination Payment subject to the limitations set forth in Section 12.3(B), are the Buyer's sole and exclusive monetary remedies, and Seller's sole and exclusive monetary liabilities, for Buyer's damages due to any delays in achieving, or failure to achieve, the Expected Commercial Operation Date.

3.8 ESS Capacity Shortfall Damages. 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**"), as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed ESS Capacity, in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8 and the ESS Energy Payment Rate shall be reduced by an amount proportional to the Delayed ESS Capacity.

3.9 Test Period. Seller shall, no later than ninety (90) Days prior to the beginning of the Test Period, give written notice to Buyer of its NERC-registered Generator Owner and Generator Operator and designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M. 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 Discharge 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 sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit K 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, and all the requirements of Commercial Operation have been met, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) Business Days after the date set forth in the Commercial Operation Notice. If 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) Capability to discharge at one hundred fifty (150) MW (the "**Guaranteed PMAX**") for four (4) uninterrupted hours, as may be adjusted pursuant to Section 3.8;

(B) [Reserved];

(C) ESS Roundtrip Efficiency equal to the Guaranteed ESS Roundtrip

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Efficiency;

(D) Actual Discharge Ramp Rate equal to the Guaranteed PMAX per second measured between 85% State of Charge and 15% State of Charge (the "**Guaranteed Discharge Ramp Rate**");

(E) Actual Charge Ramp Rate equal to the Guaranteed PMAX per second measured between 15% State of Charge to 85% State of Charge (the "**Guaranteed Charge Ramp Rate**");

(F) **Guaranteed System Latency**: <1 second;

(G) **Guaranteed Frequency Response Capability**: Guaranteed PMAX/0.1Hz; and

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5. 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) Seller Excused Hours) or to comply with the requirements of Section 7.4(A).

(A) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, Guaranteed Frequency Response Capability, or Guaranteed System Latency during ESS Unit Capabilities testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. Provided, however, under no circumstances will ESS Non-Performance Liquidated Damages (other than ESS Capacity Shortfall Damages) exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year. As used in this Section 3.13(A), "event" means an occurrence causing a failure to comply by Seller lasting no more than seventy-two (72) hours; each exceedance of the seventy-two (72) hour cap by the same occurrence will be deemed a separate event. If multiple failures occur within 72-hours of the initial event, they will be treated as a single event if arising out of a common root cause.

3.14 Guaranteed ESS Roundtrip Efficiency Payment.

(A) 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)).

3.15 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this agreement is not

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

prohibited by Applicable Law. Any breach of this Section 3.15 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 3.15 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.16 Eligible Change in Tariff. To the extent an Eligible Change in Tariff occurs between the Execution Date and one (1) year after NMPRC Approval that requires Seller to take additional actions to comply with Seller's obligations under this agreement and the costs associated with such actions, if they had been reasonably contemplated as of the Execution Date, increase Seller's costs by more than one and a half percent (1.5%) of the Contract Value at Contract execution, 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; ESS Curtailment

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.

4.2 ESS Curtailment. An ESS Curtailment occurs any time the Project is unable to receive otherwise available Charging Energy or deliver otherwise available Discharge Energy to Buyer as a result of transmission limitations regardless of whether such curtailment is affected directly by Seller or Buyer, including as a result of Buyer's scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements ("**ESS Curtailment**").

ARTICLE 5
Delivery and Metering

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this agreement 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 agreement. 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 from the Project to Buyer at the Point of Delivery at the required voltage and frequency, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on the Project and any co-located generation systems sharing the same interconnection. If applicable, delivery of Energy from the co-located generation systems to the Transmission Provider's Transmission System shall take priority over Energy discharged from the ESS; and further provided, that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Energy discharged from the ESS shall take priority over delivery of Energy from co-located generation systems.

(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 as necessary under participation in any regional market, including the EIM or the EDAM, if any.

(E) Seller shall be responsible for separately sourcing, metering and payment for an electrical power supply and associated power consumption for the Project House Energy.

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 agreement shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Electric Metering Devices, including Primary Metering Devices and redundant metering ("**Back-Up Metering**") with independent current transformers ("**CTs**") and potential transformers ("**PTs**"), are installed at or near the Electric Interconnection Point that measures the Charging and Discharging Energy of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement 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 made available to Buyer by Seller under this agreement 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 agreement. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. 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 power and Energy, if supplied by either the co-located generation system or ESS system. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided* that the Parties may revise this loss adjustment based on actual experience. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, secondary, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A) and the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices or Secondary Metering are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device or Secondary Metering fails to register, or if the measurement made by an Electric Metering Device or Secondary Metering is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall first use Back-up Metering, followed by Secondary Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that such Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If 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 agreement are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(B) [RESERVED].

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; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this agreement.

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 agreement, 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 Buyer shall not be required to receive and purchase Product when and to the extent that (a) a Seller Forced Outage or a Scheduled Maintenance Outage is continuing, or (b) Seller's performance is excused during Seller Excused Hours or due to Force Majeure Event. At its sole discretion, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will 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 agreement.

7.2 Title and Risk of Loss. As between Seller and Buyer, Buyer shall be deemed to be in control of all Charging Energy up to delivery at the Point of Delivery, Seller shall be deemed to be in control of all Charging Energy from and after such delivery to the Point of Delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy at the Point of Delivery, and Buyer shall be deemed to be in control of all Discharge Energy from and after delivery and receipt at the Point of Delivery. Buyer shall at all times retain title and risk of loss for Charging Energy, Charging Energy that is stored in the ESS, and Discharge Energy. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this agreement all right and title to such Future Environmental Attributes is included in the ESS Energy Payment Rate and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this agreement. 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 agreement 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 agreement 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; provided, that Seller shall not be required to incur any costs for Buyer to receive the benefit of Future Environmental Attributes unless requested to do so 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. Buyer shall 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 policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) [RESERVED]

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) If, at any time following submission of a good faith estimate as described in Section 7.4(C) 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.

(E) Seller shall configure the ramp rate for the Project such that Discharge Energy will not increase at a rate greater than twenty (20) MW per minute.

7.5 Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

ARTICLE 8
Payment Calculations

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for test energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Energy Payment. Subject to the provisions of this agreement, Buyer shall pay Seller an amount equal to the product of (i) the ESS Capacity, not to exceed the Guaranteed ESS Capacity, multiplied by (ii) the Monthly Hours, multiplied by (iii) the ESS Energy Payment Rate, multiplied by (iv) Monthly ESS Availability, as determined in accordance with Exhibit I (the "**ESS Energy Payment**"). The ESS Energy Payment also compensates Seller for the associated Environmental Attributes and Ancillary Services, in any Monthly Billing Period. The ESS Energy Payment includes all Taxes.

Example: For a 30-Day Month, assuming 98% availability

ESS Energy Payment =

100 MW ×30 Days ×24 hours × $16.05/MWh ×0.98

(B) If Supplemental State 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 agreement. 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 agreement which are reasonably required to allow the Parties to receive the Supplemental State Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

(C) In the event that Seller, Affiliate of Seller or Tax Equity Investor becomes eligible to receive and receives any Supplemental State Tax Incentives with respect to the Project, the value of such Supplemental State Tax Incentives will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental State 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 value of such Supplemental State 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 agreement consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this agreement for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental State Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the 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 agreement (in Dollars) to Seller for the preceding Month. Each such invoice shall show the ESS Energy Payment, information and calculations, in reasonable detail.

(D) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(F) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this agreement, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this agreement shall be made in Dollars in immediately available cleared funds by wire transfer or electronic funds transfer into the relevant account specified in this agreement 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 agreement 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 lower of (i) the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) and (ii) the maximum interest rate allowed by Applicable Law ("**Default Rate**"), as

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. A Party must notify the other Party of any error within three hundred sixty-five (365) Days of such error.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, 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 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 agreement 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 agreement.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, value 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,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement and implement the provisions in this agreement in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this agreement 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 agreement, including Section 9.9 below, all payments between the Parties under this agreement 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 agreement, including damages and other payments that are owed by a Party to the other Party pursuant to this agreement. Undisputed and non-offset portions of amounts invoiced under this agreement 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 agreement, 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 agreement.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, Applicable Law and this agreement. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer Monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key Project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent Monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-13-16 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 Day 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 62-13-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not modify, alter, or otherwise change the Project without the

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, annual performance, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this agreement and any documents ancillary hereto, neither this agreement 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 provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and ten (10) Days prior notice of the final tests scheduled relating to the commissioning of the Project Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this agreement, 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 agreement, 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 agreement, 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 all requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this agreement. 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, Section 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 standards and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than thirty (30) Days before the Commercial

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "Operating Procedures"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of Day-to-Day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this agreement, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

(A) Seller will prepare detailed test protocols and procedures for any tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this agreement. The protocols and procedures will be developed by Seller in accordance with the requirements of the agreement 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 withheld unreasonably.

(B) Not later than one hundred eighty (180) Days before the Commercial Operation Date, Seller and Buyer shall develop mutually agreeable written test protocols, based upon the methodologies identified in Exhibit F to quantify the ESS Unit Capabilities. Seller will perform annual ESS Unit Capabilities tests in accordance with those test protocols and procedures and promptly provide the results to Buyer. With the exception of the cost for Charging Energy provided by Buyer, the annual ESS Unit Capabilities tests will be performed at Seller's expense. Annual testing for ESS Capacity and Guaranteed ESS Roundtrip Efficiency shall consist of two annual tests. Each of Buyer and Seller may elect up to two additional tests to be performed at a mutually agreed time. Within thirty (30) Days of the completion of an ESS Capacity or ESS Roundtrip Efficiency test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the basis of compliance with the applicable guarantee and the basis of applicable liquidated damages in Section 3.13, adjustment to the ESS Roundtrip Efficiency payment as outlined in Section 3.14, or adjustment to the ESS Energy Payment as outlined in Section 8.1(A).

(C) Testing for all remaining ESS Unit Capabilities, including Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, Guaranteed System Latency, Guaranteed

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Frequency Response Capability, and capability to support Ancillary Services (collectively, "Buyer-Requested Performance Tests") shall be performed once per Commercial Operation Year. Upon failure to pass any of these ESS Unit Capabilities tests, Seller will have ninety (90) Days from the test date to cure any deficiencies in the test.

(D) For all ESS Unit Capabilities tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the test and Buyer shall have the option to inspect the Project during such test.

(E) For all ESS Unit Capabilities tests and re-tests, Seller shall provide a test report including all performance data, model simulations, calculations, and test reports to the Buyer for analysis and approval.

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 agreement. 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 October 15 for the period of June 1 through November 30 for the following Commercial Operation Year and by no later than April 15 for the subsequent period of December 1 through May 31. Should Buyer desire to change the reporting dates noted above as a result of Buyer's participation in a regional market or program (including the Western Resource Adequacy Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the April 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 will be subject to approval by Buyer, not to be unreasonably withheld. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th, December, or January without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, 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. Prior notice and Buyer approval shall not be required if such project maintenance is required for safety, Emergency Conditions, or compliance with Applicable Law and cannot be delayed until the next Scheduled Maintenance Outage.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the fifteenth (15th) Day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**"). 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; meteorological data; 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. If any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 [Reserved].

ARTICLE 11
Future Environmental Attributes

11.1 Sale of Future Environmental Attributes.

If Future Environmental Attributes become available, this Article 11 shall apply.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to 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 creation. The value of the Future Environmental Attributes transferred under this agreement shall be included in the ESS Energy Payment Rate.

(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 agreement, but not used, sold, assigned or otherwise transferred during the Term of this agreement. Buyer may, to the extent permitted by Applicable Law and this agreement, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement or any successor provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(E) Seller shall register the Project, as necessary, no later than thirty (30) Days after Buyer notifies Seller of the availability of such Future Environmental Attributes, 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. Notwithstanding the foregoing, Seller shall not be required to expend more than Five Thousand Dollars ($5,000) per MW annually and Ten Thousand Dollars ($10,000) per MW in the aggregate to maintain compliance due to regulatory changes relating to Future Environmental Attributes.

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this agreement (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 voluntarily taking advantage of any such law by answer or otherwise;

(4) Except during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this agreement or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this agreement, or other date mutually agreed to by the Parties in writing;

(7) Seller's assignment of this agreement, 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The failure of Seller to make any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

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

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including the Interconnection Agreement) required to make Product available at the Point of Delivery;

(3) Seller's failure to make any payment due to Buyer under or in connection with this agreement (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 agreement);

(4) Seller's failure to comply with any other material obligation under this agreement, which would result in a material adverse impact on Buyer; or

(5) Should Future Environmental Attributes become available and Seller fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this agreement.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this agreement shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise; or

(4) Buyer's assignment of this agreement except as permitted in accordance with Article 18.

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this agreement) shall constitute an Event of Default upon the failure of Buyer to cure within thirty (30) Days of written notice from Seller to Buyer.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period; or

(2) Any representation or warranty made by Buyer in this agreement

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this agreement 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 agreement 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 agreement 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 and (y) the ESS Energy Payment Rate; *provided, however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer.* 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 pursuant to this agreement, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this agreement for the procurement of Product, which includes 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 Energy 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, but in no event less than Zero Dollars ($0.00). Seller shall use commercially reasonable efforts to avoid, minimize or mitigate Seller's damages.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this agreement 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 agreement, 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 agreement 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 agreement. Upon the termination of this agreement 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. 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.

(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.

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 agreement.

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 agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this agreement, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this agreement, 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 agreement.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this agreement, 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 agreement 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 agreement to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement. 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 agreement 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 agreement.

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 agreement, 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 agreement 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 agreement (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this agreement. 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 Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) monthly construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this agreement, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this agreement, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only, and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this agreement, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this agreement. 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 agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, Exhibit C, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this agreement 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 agreement, 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. If 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. If 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**" means an event or circumstance that arises, after the Execution Date, that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this agreement. 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,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws; (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 agreement beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of two hundred seventy (270) 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 agreement 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 agreement, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. If any delay or nonperformance results from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this agreement 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 its effects impact the ability of:

(A) Seller to deliver Discharge Energy from the Project or to accept Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment;

(B) Buyer to receive Discharge Energy from the Project or to deliver Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment; or

(C) both Buyer and Seller to perform the acts described in (A) and (B), then the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this agreement.

(B) The execution, delivery, and performance of its obligations under this agreement 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 agreement;

(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 agreement; 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 agreement) 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 agreement.

(C) The obligations of Seller under this agreement are valid and binding obligations of Seller.

(D) The execution and performance of this agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Seller's execution, delivery and performance of this agreement have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

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

(L) All right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Future Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) [Reserved].

(P) [Reserved].

(Q) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(R) This ESA does not grant Buyer an option to purchase the Project or any portion of the associated assets at any time during or after the end of the Term.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

(B) The execution, delivery, and performance of its obligations under this agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this agreement;

(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 agreement; 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 agreement) 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 agreement.

(C) This agreement is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this agreement 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 agreement have been duly obtained and are in full force and effect.

ARTICLE 16
Insurance

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 within thirty (30) Days of the annual insurance policy renewal or update or change of the insurance policy, 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 agreement 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 agreement shall cover occurrences during the Term of this agreement on an "occurrence" basis. If 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 agreement, 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 respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this agreement 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 respective

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 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 agreement. 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 agreement 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 NMPRC Approval in connection with (i) the execution and performance of this agreement; and (ii) any waivers as set forth in Buyer's request for approval of this agreement (collectively, "**Requested Actions**"). An NMPRC order that defers action on cost recovery to a future case shall not be a material adverse financial order. In particular:

(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 with no material adverse financial determination, which final written order is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, *provided* that each of Seller and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(1) If the NMPRC disapproves any of the Requested Actions, then this agreement shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer will amend this agreement to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this agreement. If the Parties are unable to mutually agree on any amendments to this agreement to address such NMPRC Approval order, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval by 11:59 P.M. of December 31, 2026 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, 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 agreement by Seller to an Affiliate of Seller; (ii) a Seller Permitted Transfer; or (iii) any assignment or transfer of this agreement 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), (ii) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) 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 agreement.

(B) Seller's consent shall not be required for any assignment of this agreement by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, or consolidation of Buyer or its parent corporation, *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 such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this agreement as and if required by NMPRC regulations and will resell the Product hereunder.

18.2 Conditions on Transfers. If the rights and interests of a Party in this agreement 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 agreement 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 agreement with the Affiliate as if such Person had been named under this agreement; *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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement made without fulfilling the requirements of this agreement 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 agreement 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 and licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this agreement by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, (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 agreement; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this agreement 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 agreement 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 third-party 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 agreement.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this agreement 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 agreement; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this agreement and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

this agreement 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, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed ESS Capacity, (the "**Development Security**"), the first Fifty Thousand Dollars ($50,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Fifty Thousand Dollars ($50,000) per MW of which will be posted no later than eighteen (18) months prior to the Expected Commercial Operation Date. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed ESS Capacity (the "**Delivery Term Security**"). Seller 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 ESS Capacity Shortfall Damages and provided the Delivery Term Security. If no amounts are due and owing under this agreement and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) Day after termination of this agreement in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer:

(a) cash, (b) a Letter of Credit in form acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be 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 Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) Days before expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or ten (10) Business Days if the only event is that the credit rating of the issuer bank of a Letter of Credit has fallen below the Issuer Minimum Requirements) (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this agreement, 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 the Development Security or Delivery Term Security, as applicable to recover any amounts owing to it arising out of this agreement, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this agreement. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this agreement, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this agreement.

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 ("**Buyer's Indemnified Persons**"), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 ("**Seller's Indemnified Persons**"), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. If 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 to the applicable Governmental Authority 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 on the making available of Product arising 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 to the applicable Governmental Authority 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 agreement 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 agreement, 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 agreement, or any contractual obligation,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this agreement shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this agreement whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this agreement, 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 agreement 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 agreement.

22.5 Relationship of the Parties.

(A) This agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement 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 agreement, 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 agreement 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 agreement with a view toward effecting the purposes of this agreement 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 agreement constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this agreement, this agreement 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 agreement, 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 agreement are for ease of reference only and do not constitute a part of this agreement.

22.12 Counterparts. This agreement 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. The interpretation and performance of this agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

of any other law. All disputes arising out of or related to this agreement shall be brought in the United States District Court for the District of New Mexico; the Parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED**.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "Disclosing Party" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this agreement, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, 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 agreement. 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). To the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this agreement 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 agreement (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic), and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf), or which concerns this agreement, the Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this agreement. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this agreement:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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 Receiving Party's Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; 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 agreement, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this agreement, 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 agreement, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this agreement that relates solely to this agreement 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 agreement, 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, prior to disclosure, inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall immediately notify Buyer 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)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

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

(A) Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this agreement, 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 agreement (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this agreement or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

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 agreement, 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 agreement. 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions, and Buyer shall be responsible for Seller's reasonable third-party costs associated with assisting Buyer in such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this agreement constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code § 101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code § 101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this agreement (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 agreement, 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 Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

22.19 Telephone Recording. Each Party to this agreement 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 agreement. 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. If a dispute occurs between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Recording to the other Party upon request.

22.20 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this agreement, the Parties shall negotiate in good faith to amend this agreement to resolve such changes in order to effect performance of this agreement, at the least possible cost to the Parties, consistent with this agreement, including Section 7.4(A). To the extent that the Parties are unable to do so, either Party may initiate the process set forth in Section 13.8.

[Signature page(s) follow]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

IN WITNESS WHEREOF, the Parties have caused this agreement to be duly executed as of the date first above written. This agreement shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Laurie Williams B87ED845D25E4D9...

Name Laurie A Williams

Title Senior Vice President

Cat Hills Energy LLC

By _____

Name Jim Spencer

Title President and Chief Executive Officer

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT A
DESCRIPTION OF SELLER'S ENERGY STORAGE FACILITIES, SITE MAP, AND PROJECT SCHEDULE

1. Name of Seller's Project: Cat Hills Energy

2. Location: Valencia County, NM

3. Owner (if different from Seller):

4. Operator: Exus North America Management Partners LLC

5. 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 160 ESS containers

   c. Total nameplate capacity (AC): 150 MW

   d. Total capacity at point of delivery: 150 MW

   e. Additional technology-specific information: Approximately 40 ESS MV transformers

   f. Battery chemistry: Lithium Iron Phosphate

6. Project Schedule:

Key Milestone	Date
LGIA Execution	March 27, 2025
Major Equipment Supply Agreements Executed	February 1, 2027
Discretionary Permits	February 1, 2027
Close Financing	TBD
30% Design Complete	TBD
Start of Project Construction	TBD
First Major Equipment Delivered to Site	December 1, 2029
Interconnection In-Service Date	March 4, 2030
Commissioning Start Date	April 4, 2030

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Expected Commercial Operation	August 4, 2030
Guaranteed Start Date	January 1, 2031

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the agreement.

Site Map

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT B
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 Hidden Mountain 115kV[●].

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT C
DESCRIPTION OF SITE[1] PARCEL SURVEY FOR CAT HILLS ENERGY PROJECT

PARCEL 1:

Tract lettered "B" of CENTRAL NEW MEXICO RAIL PARK, as the same is shown and designated on the Summary Plat of said Subdivision, filed in the office of the County Clerk of Valencia County, New Mexico, on May 25, 2017, in Plat Cabinet "M", folio 342 as Document No. 201705337.

PARCEL 2:

Tracts numbered Two (2) and Three (3), of the LANDS OF HUNING LIMITED PARTNERSHIP, as the same are shown and designated on the Corrected Summary Plat filed in the office of the County Clerk of Valencia County, on February 10, 2021, in Plat Cabinet "M", folio 491 as Document No. 202102121.

[1] NTD: To be updated ~60 days prior to COD.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT D
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

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

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

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

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:
Wells Fargo Bank
ABA# 121000248
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

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

CAT HILLS ENERGY LLC

All Notices/Invoices:

Delivery Address:
Exus Renewables North America
1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Attn: John Markwell
Phone: 412-443-9618

With copy to:
Exus Renewables North America
1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Attn: Edith Webster-Freed
Phone: 929-715-3876

Mailing Address (if different from above):

Wire Transfer: [●]

With additional Notice of an Event of Default, termination and other legal notices to:
Attn: Edith Webster-Freed
Address: 1435 BEDFORD AVE. STE C2
PITTSBURGH, PA 15219
Phone: 929-715-3876

Attn: John Markwell
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Phone: 412-443-9618

Project Manager:
Exus Renewables North America
Attn: Brian Reindl
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

Public Service Company of New Mexico
Attention: Laurie Williams
414 Silver Ave. SW
Albuquerque, NM 87102
Telephone: (505) 241-0641

With a copy to:

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT E

SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
Village of Los Lunas Conditional Use Permit	Village of Los Lunas
National Historic Preservation Act Section 106 Finding of Eligibility, Consultation and Approval	New Mexico State Historic Preservation Office
Access/Driveway Permit	NMDOT/Valencia County/Village of Los Lunas
Building and Electrical Permit	Construction Industries Division on behalf of The State of New Mexico (NMCID)
NPDES Section 402 General Permit	United States EPA

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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT F
COMMISSIONING AND ANNUAL TESTING

Commissioning Tests

- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- SCADA Functionality Test (or equivalent)
- Owner Control and Data Link Functionality Tests (See Section C in this Exhibit F)
- ESS Unit Capabilities Testing
- ESS Solar Capacity Firming Test (if applicable)

Annual Testing

- ESS Unit Capabilities Testing

Commissioning Procedures

Final testing and commissioning procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements may be modified to account for factory-performed commissioning procedures and otherwise updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures. The final energy storage plant testing and commissioning process will be based on as-built design and plant configuration, and shall verify the final, as-assembled operation. The approach shall be confirmed with all equipment suppliers to ensure a safe process.

PHASE 1 – Battery to PCS

A. Battery Module
    1. Prior to installing each battery module:
        a. Test and confirm battery module voltage

B. Battery String
    1. Once the battery modules are installed in the battery rack with the necessary electrical and communication connections with the battery switchgear and Rack BMS:
        a. Confirm battery modules have auxiliary power supply
        b. Confirm battery modules communicate with rack BMS
            i. Read the System BMS and check whether the battery banks are operable, or not.
        c. Repeat steps i through ii for all battery strings connected to the PCS.
        d. Once communication is confirmed between the battery string and the System BMS, test and confirm battery string voltage on input terminals of Switchgear, one string at a time.
        e. Once complete, send all DC contactor “on” command to the System BMS and check the DC contactor’s status via the System BMS.
        f. Initiate the pre-charge circuit to balance the battery strings prior per the battery vendor specifications.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

C. Battery Bank
   1. Once all of the battery strings within a bank are connected to the input on the PCS and the System BMS, and each input on the PCS is complete with the necessary battery bank connections:
      a. Confirm communication between the System BMS and the PCS (via the EMS, or direct)
      b. Confirm voltage on the PCS terminals is within the battery manufacturer requirements to connect the strings in parallel.

D. PCS
   1. Connect a temporary power supply such as a generator to the PCS to charge the battery bank.
   2. Turn on the PCS.
   3. Charge the battery bank.
   4. Disconnect the temporary power supply.
   5. Connect the PCS to a load bank.
   6. Discharge the battery bank into the load bank.
      a. Confirm the battery bank capacity (kWh) based on power for duration.

E. Repeat steps 1 through 4 for every PCS in the Energy Storage System.

F. End of Phase 1

G. PHASE 2 – PCS to MV Bus in Substation

H. Medium Voltage Block
   1. Disconnect / isolate the battery bank voltage from the PCS
   2. Connect the PCS to the medium voltage transformer.
   3. Connect the Medium Voltage Blocks to the Medium Voltage Feeder
   4. Connect the Medium Voltage Feeder to the Medium Voltage bus in the substation via the MV circuit breaker.
   5. With all blocks connected to the Medium Voltage Feeder (approximately 8-10 blocks per MV Feeder), test and commission each MV block, one at a time. (This assumes the substation is energized and capable of charging and discharging.)

      a. Charge each block to 100% SOC.
      b. Let the battery rest as recommended by the battery vendor.
      c. Discharge each block to 0% SOC.
      d. Open the MV Feeder circuit breaker upon completion.

I. Repeat steps 1 through 2 for all Medium Voltage Feeders

J. End of Phase 2

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

K. PHASE 3 – MV bus to POI

L. One MV Feeder at a time, close the MV Feeder Breaker, and energize all of the blocks on the feeder.
M. Allow the MV Feeder to charge and then discharge. Once complete, repeat step 1 for all MV Feeders.

Commissioning Testing

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

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. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this profile shall not cause the ESS to charge from the grid.

Procedure**:**

1. Record the ESS active power level at the Electric Metering Device.

2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.

3. Upon confirmation of the availability of sufficient output from Seller's other projects or to the extent of authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

SCADA Functionality Test

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

Owner Control and Data Link Functionality Test

Seller shall prepare and submit to Buyer an Owner Control and Data Link Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Owner Control and Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

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 agreement and battery manufacturer's then-current operating and testing requirements]

Commissioning and Annual 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 agreement) throughout the term of the agreement. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

A. ESS Unit Capabilities Testing

1. ESS Capacity Test

a. 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).

b. Requirements Applicable to all ESS Capacity Tests

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

i. Purpose of Test. Each ECT shall:

- determine the ESS Capacity for the purposes of this agreement;
- determine the Roundtrip Efficiency (RTE) of the ESS;

ii. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

- discharge time (minutes);
- ESS Charging Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy In**");
- ESS Discharge Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy Out**");
- 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**");
- 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**");

iii. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

iv. Test Elements and Sequence. Each ECT shall include the following test elements:

- starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate setpoint equal to the Guaranteed ESS Capacity;
- the determination of Point of Delivery Energy In, as measured by the 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.
- the discharging of the ESS from a 100% State of Charge at a power discharge rate setpoint equal to the Guaranteed ESS Capacity (MW);
- the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging at the Guaranteed ESS Capacity;
- 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 Electric Metering Device shall be programmed to correct for losses between the 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;

v. Test Conditions.

- 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.

- 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 E.1.2.F of these ESS Capacity Test Procedures.

- 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.

- 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 Article 5 of the agreement.

vi. 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), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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.

vii. 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:

- A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
- 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;
- The ESS Capacity as determined by the ECT, including supporting calculations; and
- 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 A(1)(b)(vi) of this ESS Capacity Test Procedure.

viii. Supplementary ESS Capacity Test Protocol. No later than one hundred eighty (180) 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 Project (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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

maintained by the Parties.

ix. 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 agreement, 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 agreement.

x. 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:

$$Roundtrip\ Efficiency(\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})}$$

2. ESS Response Delay Test

a. **Purpose of Test:**

i. Determine the Actual Charge Ramp Rate of the ESS

ii. Determine the Actual Discharge Ramp Rate of the ESS

b. **Test Conditions:**

The Project 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. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this test shall not cause the ESS to charge from the grid.

c. **Test procedure:**

i. Actual Charge Ramp Rate:

- Send an active power charge command of Guaranteed PMAX to charge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX charge command until the power measured at the Electric Metering Device changes from 0MW to at least 1% of charge Guaranteed PMAX shall be

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

the Charge Ramp Latency

- The time measured to ramp from 1% to charge Guaranteed 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

ii. Actual Discharge Ramp Rate:

- Send an active power discharge command of Guaranteed PMAX to discharge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX discharge command until the power measured at the Electric Metering Device changes from 0MW to at least 1% of discharge Guaranteed PMAX shall be the Discharge Ramp Latency

- The time measured to ramp from 1% to discharge Guaranteed 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

iii. **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 3.13.

- An "**Actual System Latency**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency = Max(Charge\ Ramp\ Latency, Discharge\ Ramp\ Latency)$$

- An "**Actual System Latency Delay**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency\ Delay = Max(Guaranteed\ System\ Latency, Actual\ System\ Latency) - Guaranteed\ System\ Latency$$

- An "**Actual Discharge Ramp Rate Delay**" shall be calculated, which shall be equal to:

$$Actual\ Discharge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Discharge\ Ramp\ Rate, Actual\ Discharge\ Ramp\ Rate) - Guaranteed\ Discharge\ Ramp\ Rate$$

- An "**Actual Charge Ramp Rate Delay**" shall be calculated, which shall be equal to:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

$$Actual\ Charge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Charge\ Ramp\ Rate, Actual\ Charge\ Ramp\ Rate) - Guaranteed\ Charge\ Ramp\ Rate$$

- The "**Charging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Charging\ ESS\ Response\ Delay = Actual\ Charge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- The "**Discharging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Discharging\ ESS\ Response\ Delay = Actual\ Discharge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- 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 Electric Metering Device is a positive value during an ESS Unit Capabilities test, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT G
INSURANCE COVERAGES

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

A. Workers' Compensation Insurance that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million Dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Network Security and Privacy Liability. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

F. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

G. 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 Seller 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 Seller 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 Seller 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

force or through an extended reporting period. Seller shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Seller 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT H

ROUNDTRIP EFFICIENCY GUARANTEE

	Annual R/T Eff
1	84%
2	83.7%
3	83.4%
4	83.1%
5	82.8%
6	82.5%
7	82.2%
8	81.9%
9	81.6%
10	81.3%
11	81%
12	80.7%
13	80.4%
14	80.1%
15	79.8%
16	79.5%
17	79.2%
18	78.9%
19	78.6%
20	78.3%

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT I

AVAILABILITY CALCULATIONS

Section 1. Definitions.

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

"**ESS Excused Hours**" means the aggregate Seller Excused Hours to the extent that the ESS is affected during such hours, but shall not include any hours described in clause (e) of the definition of ESS Unavailable Hours. 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 Unavailable Hours**" means those 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 ESS Excused Hour); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; (d) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy; or (e) unavailable due to the conditions described in Section 14.4. 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 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 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 Month. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the Monthly 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 Hours**" means the product of (a) twenty-four (24), multiplied by (b) the number of Days in such Month.

"**Monthly Report**" has the meaning set forth in Section 3 of this Exhibit.

Section 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 (excluding ESS Non-Performance Liquidated Damages pursuant to Section 3.13 of the agreement or ESS Roundtrip Efficiency deficiencies pursuant to Section 3.14 of the agreement) shall be reductions to the ESS Energy Payments due to any

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Monthly ESS Availability percentages that are less than 100%, and in each case 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.

Section 3. Monthly Report.

No later than the tenth (10th) Day of each 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 Month (the "**Monthly Report**").

Section 4. Disputes.

Disputes as to any calculations under this Exhibit I shall be addressed as provided in Section 13.8 of the agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ATTACHMENT 1 TO EXHIBIT I

EXAMPLE CALCULATION

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 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 Month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Monthly Hours: 720 hours

(c) Monthly ESS Availability: Sum of Monthly ESS Available Hours/Monthly Hours = 634/720 = 88.1%

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT J

FORM OF SELLER GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, _____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 [●] duly organized and validly existing under the laws of the State of [●] and has the [●] 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 [●]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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

4. RESERVATION OF CERTAIN DEFENSES.

(a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the agreement that Obligor may assert that is based on Counterparty's breach of the agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the agreement or the lack of validity or enforceability of Obligor's obligations under the agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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*):

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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:_____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT K

COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by _____("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the agreement.

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of 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__.

Cat Hills Energy LLC	**[Licensed Professional Engineer]**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
	Date: _____
	License Number and LPE Stamp: _____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT L

ESS OPERATING RESTRICTIONS

Subject to the terms of this agreement, the ESS shall be operated in accordance with the following operating restrictions:

1. TBD

[*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 agreement and the ESS Manufacturer's then-current operating and testing requirements*]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT M

ESS FUNCTIONAL MAPPING

The Project's NERC verified ESS Generator 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)				

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT N

INTERCONNECTION METERING STANDARD

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT O

PREPARATION FOR COMMISSIONING

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 agreement and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the agreement and complete all testing as defined in Exhibit F of the agreement.

Figure 1 is for reference purposes only.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the agreement.

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	Email
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@txnmenergy.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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 modeling for functionality required for the participating resource schedule coordination (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.

- "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- **"Project Manager"** – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.

- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.

- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.

- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

    - Balancing Authority (BA)
    - 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:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

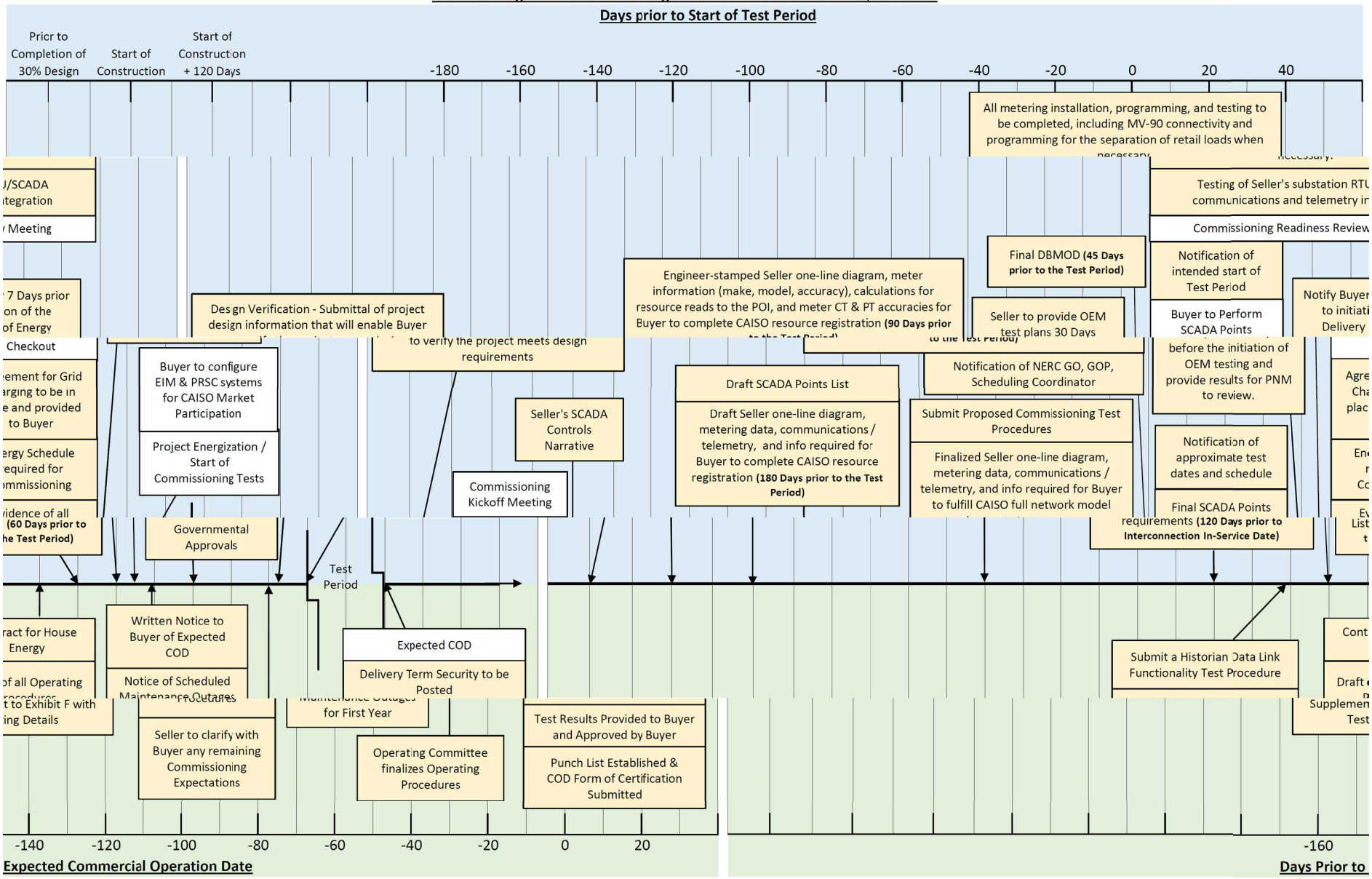
TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving agreement 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	10 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing.	**Seller**	Buyer's Project Manager	Prior to the scheduled performance testing
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	Prior to the scheduled performance testing
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. 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. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
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
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 agreement 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



accordance with the above schedule requirements

Seller shall submit and be responsible for all items indicated in gold in
Seller shall otherwise support and participate in all identified activities

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

- 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 agreement) 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

    - 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. DERMS Workbook inputs:
   a. Seller shall provide required information for the DERMS, including:
      - SCADA keys, resource characteristics, meteorology, etc.
      - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 the test evaluation results might 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 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.

Wildcat Solar Facility Power Purchase Agreement

PNM Exhibit GBB-6

Is contained in the following 168 pages.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

POWER PURCHASE AGREEMENT

WILDCAT SOLAR FACILITY

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

WILDCAT SOLAR POWER PLANT LLC

Dated as of April 30, 2026

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

POWER PURCHASE AGREEMENT— WILDCAT SOLAR FACILITY .....ERROR! BOOKMARK NOT DEFINED.

ARTICLE 1 Definitions and Rules of Interpretation 1

1.1 Definitions 1

1.2 Rules of Construction 19

1.3 Interpretation with Interconnection Agreement 20

1.4 Interpretation of Arrangements for Electric Supply to the Project 20

ARTICLE 2 Term and Termination 21

2.1 Execution Date and Term 21

ARTICLE 3 Project Description 21

3.1 Commercial Terms 21

3.2 Project 22

3.3 Location 22

3.4 General Design of the Project 22

3.5 Expected Commercial Operation Date 24

3.6 Extension of Expected Commercial Operation Date 24

3.7 Delay Damages 24

3.8 Capacity Shortfall Damages 25

3.9 Test Energy 25

3.10 Notice of Commercial Operation 25

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation 26

3.12 Eligible Change in Tariff 26

ARTICLE 4 AGC; Curtailment 26

4.1 AGC; Curtailment 26

ARTICLE 5 Delivery and Metering 27

5.1 Delivery Arrangements 27

5.2 Availability Reporting 28

5.3 Electric Metering Devices 28

5.4 Adjustment for Inaccurate Meters 30

ARTICLE 6 Conditions Precedent 30

6.1 Conditions Precedent 30

6.2 Notice 31

ARTICLE 7 Sale and Purchase of Solar Energy Output 31

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

7.1 Sale and Purchase of Solar Energy Output 31
7.2 Title and Risk of Loss 31
7.3 Future Environmental Attributes 31
7.4 Scheduling 32
7.5 Seller Forced Outages 32
7.6 Availability Guarantee 33
ARTICLE 8 Payment Calculations 33
8.1 Billing Components 33
8.2 Payment Support Requirement 33
8.3 Survival on Termination 33
ARTICLE 9 Billing and Payment Procedures 33
9.1 Statements and Payment of Electricity Payments 33
9.2 Miscellaneous Payments 34
9.3 Currency and Method of Payment 34
9.4 Default Interest 34
9.5 Disputed Items 34
9.6 Statement Errors 35
9.7 Taxes 35
9.8 Setoff and Payment Adjustments 36
9.9 Netting 36
9.10 Survival on Termination 36
ARTICLE 10 Operations and Maintenance 37
10.1 Construction of the Project 37
10.2 Commissioning and Testing 38
10.3 Access to and Inspection of the Project 39
10.4 Operating Parameters 39
10.5 Operating Procedures 40
10.6 Project Maintenance 40
10.7 Sales to Third Parties 41
10.8 Commissioning Performance Tests 41
10.9 [Reserved] 42
10.10 [Reserved] 42
10.11 Weather Stations 42

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

10.12 Monthly Operational Report 43
ARTICLE 11 Environmental Attributes 43
11.1 Sale of RECs and Environmental Attributes. 43
ARTICLE 12 Default and Remedies 45
12.1 Events of Default of Seller 45
12.2 Events of Default of Buyer 47
12.3 Damages Prior to Termination 48
12.4 Termination 49
12.5 Specific Performance 50
12.6 Remedies Cumulative 50
12.7 Waiver and Exclusion of Other Damages 50
12.8 Payment of Amounts Due to Buyer 50
12.9 Duty to Mitigate 51
12.10 Security Rights 51
ARTICLE 13 Contract Administration and Notices 51
13.1 Notices in Writing 51
13.2 Representative for Notices 51
13.3 Authority of Representatives 51
13.4 Records 51
13.5 Provision of Real-Time Data 53
13.6 Examination of Records 53
13.7 Exhibits 53
13.8 Resolution of Issues 53
ARTICLE 14 Force Majeure 54
14.1 Definition 54
14.2 Notification Obligations 55
14.3 Duty to Mitigate 56
14.4 Force Majeure Event Occurring After Commercial Operation 56
ARTICLE 15 Representations, Warranties and Covenants 56
15.1 Seller's Representations, Warranties and Covenants 56
15.2 Buyer's Representations, Warranties and Covenants 58
ARTICLE 16 Insurance 59
16.1 Evidence of Insurance. 59

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

16.2 Term and Modification of Insurance. 60
16.3 Endorsements and Other Requirements 60
ARTICLE 17 Legal and Regulatory Compliance and Governmental Approval 61
17.1 Applicable Laws 61
17.2 Governmental Approvals 61
17.3 NMPRC Approval 61
17.4 Compliance with Reliability Standards 62
17.5 Compliance Information 62
ARTICLE 18 Assignment and Other Transfer Restrictions 62
18.1 No Assignment Without Consent 62
18.2 Conditions on Transfers 63
18.3 Change of Control 63
18.4 Transfer Without Consent Is Null and Void 63
18.5 Subcontracting 64
18.6 Assignment to Lenders 64
ARTICLE 19 Credit and Security Requirements 65
19.1 Security 65
19.2 Form of Security 65
19.3 Grant of Security Interest 66
19.4 Use of Security 66
ARTICLE 20 Indemnity; Insurance Proceeds 66
20.1 Indemnification 66
20.2 Notice of Claims; Procedure 67
20.3 Insurance Proceeds 68
ARTICLE 21 Governmental Charges 68
21.1 Allocation of Governmental Charges 68
ARTICLE 22 Miscellaneous 68
22.1 Waiver 68
22.2 Fines and Penalties 68
22.3 Standard of Review 69
22.4 Disclaimer of Certain Third Party Beneficiary Rights 69
22.5 Relationship of the Parties 69
22.6 Equal Employment Opportunity Compliance Certification 69

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

22.7 Survival of Obligations 70
22.8 Severability 70
22.9 Complete Agreement; Amendments 70
22.10 Binding Effect 70
22.11 Headings 70
22.12 Counterparts 70
22.13 Governing Law 70
22.14 Confidentiality 71
22.15 Marketing Rights; Press Releases and Media Contact; Access 73
22.16 Right to Mortgage 73
22.17 Forward Contract and Master Netting Agreement 74
22.18 Accounting Matters 74
22.19 Telephone Recording 75
22.20 Market Event 76

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBITS

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

EXHIBIT B One-Line Diagrams of Project and Interconnection Facilities

EXHIBIT C Description of Site

D Notice Addresses

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

EXHIBIT F Commissioning Tests

G-1 Insurance Coverages

EXHIBIT G-2 Form of Attestation and Bill of Sale

H Availability Guarantee

I Form of Seller Guaranty

EXHIBIT J Commercial Operation Form of Certification

Error! Reference source not found. Annual Degradation Guarantees

L Annual Generation Forecast

M PPA Functional Mapping

N Interconnection Metering Standard

O Commissioning and Testing Process

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

POWER PURCHASE AGREEMENT**— WILDCAT SOLAR FACILITY**

This Power Purchase Agreement (this "**PPA**") — Wildcat Solar Facility, as may be amended from time to time, is entered into this 30th Day of April, 2026 ("**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 Wildcat Solar Power Plant LLC, a New Mexico limited liability company ("**Seller**"), whose principal place of business is 1 Riverway Suite 1700, Houston, Texas 77056. Buyer and Seller may be referred to in this 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 a solar energy electric generating facility with an expected total maximum power output of approximately ninety (90) MW ("**Project**"), as further defined herein and in EXHIBIT A; and

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

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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 accepts communications from the System Control Center and automatically adjusts the generation quantity of the Project, including communication circuits to communicate Project operating information to Buyer's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

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

"**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 agreement and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

"**Buyer Costs**" means 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 agreement or entering into new arrangements which replace this agreement; and all reasonable attorneys' fees and expenses incurred by Buyer in connection with the termination of this agreement, to the extent such costs are not already included in Replacement Energy Costs.

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

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

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

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

"**Commercial Operation**" means that the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity have been constructed, commissioned, tested, and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) Seller has obtained all Seller required permits, required consents and Governmental Approvals required for Seller to operate the Project in accordance with Applicable

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Law are in full force and effect, (c) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Energy to the Point of Delivery in an amount at least equivalent to the Guaranteed Solar Capacity and is not in material breach of its Interconnection Agreement, (d) Seller has satisfactorily completed all of the Commissioning Tests identified in EXHIBIT F in accordance with mutually agreed test procedures, (e) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement, (f) Seller has obtained required insurance coverage in compliance with Section 16.1 and G-1 of this agreement, and (g) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

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

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

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

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

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

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

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

"**Compensable Curtailment**" means any curtailment of the Project, that is not a Seller Curtailment to the extent such curtailment during a calendar year has exceeded 11,000 MWh for each calendar year; *provided*, that for any period the Project is operating for less than a full calendar year, 11,000 MWh shall be pro-rated for the applicable portion of the calendar year in which the Project is operating within such calendar year and the determination of any Compensable Curtailment shall be based on such pro-rated amount.

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

"**Creditworthy**" or "**Creditworthiness**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa3" or higher by Moody's, (b) "BBB-" or higher by S&P, and (c) "BBB-" or higher by Fitch.

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

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

"**DC**" means direct current.

"**Deemed Energy**" means the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Compensable Curtailment. Deemed Energy (MWh) shall be calculated using weather and pyranometer data from the meteorological station(s) at the Site for all or a portion of the Solar Units taken out of service due to the curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery.

The Parties agree that Deemed Energy shall be calculated for each interval in which curtailment occurs, defined as when

(a) the Actual Output ("AO") (i) is decreasing towards the Setpoint ("SP") at a rate greater than or equal to 10 MW per minute, or (ii) is at or below the Setpoint; and

(b) the Setpoint is less than both the Nameplate capacity and the Potential Power ("PP") output.

For each such interval, Deemed Energy shall be calculated as the difference between Potential Power and the greater of Actual Output or SP, converted to MWh. Any calculated values that are less than zero shall be excluded from the final Deemed Energy amount, such that Deemed Energy shall not be negative. This methodology ensures that only energy curtailed as a direct result of the curtailment instruction is included and that reductions in output attributable to other causes are not counted as Deemed Energy.

$$Deemed\ Energy\ (MWh) = MAX\left(\frac{PP - MAX(AO, SP)}{12}, 0\right)$$

Where:

- PP represents the modeled available power based on weather and irradiance data;
- AO represents measured unit output;
- SP represents the applicable Setpoint; and
- Division by 12 converts five-minute intervals to MWh.

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

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

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

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

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

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

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

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

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

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

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

"**Downgrade Event**" is when a Person fails to maintain Creditworthiness.

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

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

"**EIM**" means the Western Energy Imbalance Market, an energy-only real-time market operated by CAISO and offered to western participants outside of the CAISO balancing

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

authority area, where such participants can voluntarily determine how their transmission and generation resources engage in the market.

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission System as set forth in Appendix A of the Interconnection Agreement.

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

"**Eligible Change in Tariff**" means any 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 Project.

"**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, in each case at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices.

"**Energy Storage Agreement**" means that certain Energy Storage Agreement between Wildcat Solar Power Plant LLC and Buyer dated as of April 30, 2026.

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

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

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

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

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

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

"**Fitch**" means Fitch Ratings Inc and any successor thereto.

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

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy provided therefrom are eligible to receive or generate, based on 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 agreement or the procurement pursuant to this agreement of renewable energy and Renewable Energy Certificates and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 Solar Energy Output contemplated by this agreement, either directly or indirectly.

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

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

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

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or 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 (i) 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; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

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

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

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

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

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

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

"**Market Event**" has the meaning set forth in Section 22.20.

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

"**Monthly Billing Period**" means each Month during the Term in which Solar Energy Output has been generated by Seller for Buyer and delivered to the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

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

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

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

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

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

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

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

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

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

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

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

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

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

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

"**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 0 of O.

"**Point of Delivery**" means the electric system point at which Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided by Seller to Buyer under this agreement. The Point of Delivery shall be specified in Section 3.1 and EXHIBIT B to this agreement. Energy delivered directly to the Energy Storage System shall be deemed to have been delivered at the Point of Delivery.

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

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

"**Project**" means Seller's solar energy generation facility with a nameplate capacity of ninety (90) MW at the Point of Delivery, located in McKinley County, New Mexico which will produce the Solar Energy Output made available to Buyer under this agreement, including one or more of Seller's Solar Units and Seller's Interconnection Facilities, as identified and described in Article 3 and EXHIBIT A to this agreement, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the conversion and/or

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

generation facilities, including the Solar Units, generators, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this agreement.

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

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

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

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

"**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;

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating at least one hundred fifty (150) MW, in the aggregate, of solar generation and that is trained on the functionality and operation of the solar generation technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) Creditworthiness, and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project), or (b) is reasonably acceptable to Buyer.

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

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

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

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

"**Renewable Energy Certificate**" or "**REC**" means a WREGIS Certificate as defined by the WREGIS Operating Rules and all Environmental Attributes associated with the generated energy. Seller must deliver RECs that are compliant with the requirements of the New Mexico Renewable Energy Act, NMSA 1978 §§ 62-16-1 to -10 and 17.9.572 NMAC ("Rule 572"), each as amended.

"**Replacement Energy Costs**" means the costs to Buyer reasonable and necessary to replace Solar Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein and based upon similar terms, conditions and performance standards outlined in this agreement) which Seller, in accordance with this agreement, was obligated to deliver to Buyer but failed to provide pursuant to this agreement. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs and Ancillary Services) delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Solar Energy Output to the Point of Delivery and any associated transmission or distribution costs, (b) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (c) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this agreement.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**SCADA**" means the Project's remote supervisory control and data acquisition system, which includes all necessary components and contact points at the Project.

"**Scheduled Maintenance Outage**" means a time during which any portion of the Installed Solar Capacity is shut down or its output reduced to undergo scheduled maintenance in accordance with this agreement, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"**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 Curtailment**" means any time the Project is unable to deliver Energy to the Point of Delivery. It shall not be a Seller Curtailment due to actions of the Transmission Provider or if the Buyer is unable to receive otherwise available Energy at the Point of Delivery.

"**Seller Excused Hours**" means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Compensable Curtailment, (b) a Force Majeure Event, (c) any failure by Buyer to perform a material obligation under this agreement (other than due to a breach by Seller of its obligations under this agreement), or (d) weather conditions that exceed equipment manufacturer's specifications. Seller Excused Hours includes any curtailment that is not considered a Seller Curtailment.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Project to the Point of Delivery not associated with Seller Excused Hours.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Seller Guarantor**" means a Person that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as I.

"**Seller Permitted Transfer**" means any of the following: (a) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Ultimate Parent retains the ability to control the management and policies of Seller; (b) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction or (iii) a direct or indirect transfer to a Person of 50% or more of the shares of, or equity interests in, Seller; *provided*, that in the case of (b), (A) the transferee is a Qualified Transferee, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to any Seller's Lender and any subsequent assignee, designee or transferee thereof; provided that in the case of (c), (A) the Seller's Lender or its applicable assignee, designee or transferee is a Qualified Transferee and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Solar Energy Output) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing; provided that if (a)(i) is less than (a)(ii), then zero, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this agreement, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this agreement or in entering into new arrangements which replace this agreement; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this agreement.

"**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

"**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 agreement. This agreement is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval. Adding or subtracting contiguous parcels of property or modifying the layout of strings or Solar Units within the Site will not be deemed a relocation requiring Buyer consent.

"**Solar Energy Output**" means Metered Output, Environmental Attributes (including but not limited to RECs) and Ancillary Services generated by the Project.

"**Solar Energy Output Payment Rate**" is defined in Section 3.1.

"**Solar Period Hours**" has the meaning set forth in H.

"**Solar Unit(s)**" means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with a single inverter.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of generating units, including the Solar Units.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits and any other tax credits that are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority.

"**Term**" means the period during which this agreement shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Energy**" means any and all Solar Energy Output generated by the Project and delivered to Buyer during the Test Period.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date; provided, however, in no event shall the Test Period be longer than ninety (90) Days.

"**Test Rated Power**" has the meaning set forth in Section 10.8(B)(5).

"**Transmission Provider**" means the Person, designated agent, or third party acting in its transmission function capacity, owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means Daiwa Securities Group Inc.

"**Weather Stations**" has the meaning set forth in Section 10.11(A).

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

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

"**WREGIS Qualified Reporting Entity**" as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS Certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules and WREGIS Terms of Use.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits," or "Schedules" shall be to articles, sections, exhibits, or schedules of this agreement unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this agreement; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this agreement, the terms of this agreement shall take precedence.

(D) This agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this agreement and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this agreement 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 agreement. Unless expressly provided otherwise in this agreement, (i) where the agreement requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the agreement 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) All uses of the word "shall" in this agreement are to be interpreted as imperative and not permissive.

(H) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this agreement as a whole.

(I) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(J) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or."

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this agreement are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this agreement, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this agreement. This agreement shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this agreement, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This agreement does not provide for the supply of retail electric power to the Project for any purpose ("**House Energy**"). Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter Energy generated and delivered by the Project in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this agreement are not binding upon the Local Provider. For purposes of this agreement, 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 agreement, 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 agreement. This agreement shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and for House Energy, backfeed power and station service power or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy, backfeed power and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This agreement shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Standard 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 agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this agreement, as each term is more fully set forth in this agreement:

COMMERCIAL TERMS

<table>
<tr><td>Buyer: Public Service Company of New Mexico</td><td>Seller: Wildcat Solar Power Plant LLC</td></tr>
<tr><td colspan="2">Project: Wildcat Solar Facility</td></tr>
<tr><td colspan="2">Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided under this agreement, as further specified in the definition of “Point of Delivery.”</td></tr>
<tr><td>Delivery Term: Twenty (20) years</td><td>Guaranteed Solar Capacity (MWs): 90 MW at the Point of Delivery</td></tr>
<tr><td>Product Type: Bundled Energy, Ancillary Services, RECs, and Environmental Attributes</td><td>Solar Energy Output Payment Rate: $39.90/MWh, as further specified in Section 8.1(A).</td></tr>
</table>

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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: April 30, 2029	

3.2 Project.

(A) EXHIBIT A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

(B) L identifies the expected first year total annual Energy to be delivered from the Project to the Point of Delivery and the corresponding capacity factor. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in EXHIBIT A to this agreement. EXHIBIT A also contains a preliminary indication of the location of the Solar Units at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units and Interconnection Facilities at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the terms of this agreement and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Section 3.4(A) through Section 3.4(H), and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, 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 N Interconnection Metering Standard from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) deliver Energy to Buyer, at the frequency specified by Buyer;

(F) be capable of both full load and idle 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 immediate disconnection remotely by the System Control Center;

The Project shall meet or exceed the recommended performance specifications of this Section 3.4(I) through Section 3.4(K), and as appropriately defined in IEEE Standard 2800-2022 Section 5, Section 6 and Section 7 at the Point of Delivery at all times.

(I) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Section 5 at the Point of Delivery;

(J) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Section 7 at the Point of Delivery, which shall be Category II minimum;

(K) 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

(L) No later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to, MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the Project. These controls shall include the following MESA-ESS modes or equivalent: (i) Active Power Smoothing, (ii) Automatic Generation Control, and (iii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Section 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,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this agreement, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis (a) up to a maximum of one hundred fifty (150) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event (together with a reasonable period for the affected Party to cure the Force Majeure Event as contemplated in Section 14.2) that delays construction or commencement of operation of the Project, (b) 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, or (c) other than in connection with or arising out of or relating to any Force Majeure Events or the interconnection of the Project, (i) if Seller notifies Buyer that Seller requires a performance from Buyer of Buyer's obligations under EXHIBIT F or O, and (ii) Buyer does not timely perform such obligations, then on a day-for-day basis without an aggregate cap for the time period for the days of delay beyond Buyer's failure to perform in a timely manner to the extent such failure by Buyer to perform 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 the Expected Commercial Operation Date is extended pursuant to clause (a) or (b) of this Section for the maximum extension period set forth in the applicable clause, then Buyer will have the right to terminate this agreement without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity as of the determination date. The Delay Damages and, if applicable, Buyer Termination Payment subject to the limitations set forth in Section 12.3(B), are the Buyer's sole and exclusive monetary remedies, and Seller's sole and exclusive monetary liabilities, for Buyer's damages due to any delays in achieving, or failure to achieve, the Expected Commercial Operation Date.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

3.8 Capacity Shortfall Damages. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Solar Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Six Hundred Thousand Dollars ($600,000) per MW of Delayed Capacity (as of the Guaranteed Start Date) ("**Capacity Shortfall Damages**"), as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed Solar Capacity, in which case the Guaranteed Solar Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Energy.

(A) Seller shall, no later than forty-five (45) Days prior to the beginning of the Test Period, give written notice to Buyer of its NERC-registered Generator Owner and Generator Operator and designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with M. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Test Energy to Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of the Test Period.

(B) Seller shall retain Public Service Company of New Mexico as its WREGIS Qualified Reporting Entity to report to WREGIS under the WREGIS Operating Rules, unless agreed to otherwise by Buyer. Seller shall document and provide information required for the WREGIS Qualified Reporting Entity to record RECs with WREGIS for the Test Energy generated prior to the Commercial Operation Date, including but not limited to production data and REC vintage. To the extent that Seller does not provide the necessary information or WREGIS does not provide WREGIS Certificates for the Test Energy, Seller shall (a) provide the RECs for a quantity of Energy equivalent to the quantity of such Test Energy or (b) reimburse Buyer for Buyer's reasonable and documented costs to replace RECs for a quantity of Energy equivalent to the quantity of such Test Energy.

3.10 Notice of Commercial Operation. Not less than sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, and all the requirements of Commercial Operation have been met, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) Business Days after the date set forth in the Commercial Operation Notice. If Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this agreement is not prohibited by Applicable Law. Any breach of this Section 3.11 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.12 Eligible Change in Tariff. To the extent an Eligible Change in Tariff occurs between the Execution Date and one (1) year after NMPRC Approval that requires Seller to take additional actions to comply with Seller's obligations under this agreement and the costs associated with such actions, if they had been reasonably contemplated as of the Execution Date, increase Seller's costs by more than one and a half percent (1.5%) of the Contract Value at contract execution, 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; Curtailment

4.1 AGC; Curtailment.

(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 capable of controlling each inverter. Beginning on the Commercial Operation Date and in response to directives from the System Control Center,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Seller shall curtail the Project by use of the AGC system to effect Buyer's curtailment rights pursuant to this Section 4.1 for a Compensable Curtailment. 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.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to curtail the Project by use of the AGC system to effect a Compensable Curtailment pursuant to this Section 4.1(B). Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations. If the Project's AGC set-point control is switched to Local status, Seller shall notify Buyer as soon as possible, detailing the rationale behind the change of status. Buyer maintains the right to enforce any curtailment as required for the protection of Buyer's systems. Such Compensable Curtailment rights do not provide the Buyer with any rights to direct the operation of the Project. For a Compensable Curtailment only, Buyer shall pay Seller an amount equal to the sum of the Solar Energy Output Payment Rate multiplied by the Deemed Energy associated with the number of Compensable Curtailment MWh. Buyer shall have the right to review and approve Seller's calculations and data utilized to develop the calculations of Deemed Energy. Deemed Energy results shall be trued up to correct for consistently biased calculation error based on assessment of normal operations periods before and after any given curtailment event.

(C) Seller shall reduce Solar Energy Output from the Project during and to the extent of any curtailment.

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Seller shall be responsible for the costs of interconnection and costs required to deliver the Energy from the Project to Buyer at the Point of Delivery at the required voltage and frequency, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to the Metered Output up to the Point of Delivery. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the ESS, provided that delivery of Energy from the Project to the Transmission Provider's Transmission System shall take priority over Energy discharged from the ESS; and further provided, that when

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Energy discharged from the ESS shall take priority over delivery of Energy from the Project.

(B) [Reserved].

(C) On a Day-ahead basis, and no later than 4:00 a.m. MST, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer at the Point of Delivery. Each Friday, and no later than 12:00 noon MST, Seller shall provide Buyer a weekly Project generation forecast for the following week based on equipment availability. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond, including as necessary under participation in any regional market, including the EIM or the EDAM, if any.

(E) Seller shall provide to Buyer a one-line diagram, metering data, telecommunications and telemetry data, and other information required for Buyer to complete resource registration with CAISO in accordance with the timeline identified in Table 2 of 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.

(F) Seller shall be responsible for separately sourcing, metering and payment for an electrical power supply and associated power consumption for the Project House Energy.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this agreement shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices, including Primary Metering Devices and redundant metering ("**Back-Up Metering**") with independent current transformers ("**CTs**") and potential transformers ("**PTs**"), are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this agreement 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 agreement. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. 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 power and Energy, if supplied by the solar generation system. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided* that the Parties may revise this loss adjustment based on actual experience. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, secondary, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A) and the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices or Secondary Metering are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 first use Back-Up Metering, followed by Secondary Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that such Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

ARTICLE 6
Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this agreement are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

(B) [Reserved].

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this agreement.

ARTICLE 7
Sale and Purchase of Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this agreement, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Solar Energy Output delivered or deemed delivered by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase Solar Energy Output from the Project when and to the extent that (a) a Party's performance is excused by a Force Majeure Event, (b) a Compensable Curtailment is continuing, (c) a Seller Forced Outage is continuing, or (d) a Scheduled Maintenance Outage is continuing. Furthermore, and without limiting Section 10.7, Buyer shall not be required to receive or purchase Solar Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Solar Capacity as adjusted for losses to the Point of Delivery. In no event shall Seller have the right to procure any element of the Solar Energy Output from sources other than the Project for sale or delivery to Buyer under this agreement.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Energy from the Project up to delivery and receipt at the Point of Delivery, and Buyer shall be deemed to be in control of such Energy from the Project from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy from the Project shall transfer from Seller to Buyer at the Point of Delivery. Title related to any Environmental Attributes and Future Environmental Attributes shall transfer from Seller to Buyer upon generating of the Energy from the Project.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this agreement all right and title to such Future Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output, and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this agreement. 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 agreement, such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. The

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements and any other applicable guidelines. Buyer shall control scheduling of Metered Output. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Solar Energy Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall provide Buyer with a good faith estimate of the hourly quantities of Solar Energy Output that Seller expects to generate in the following Commercial Operation Year ("**Projected Schedule**"). Seller shall also provide estimates of the daily quantity of Energy to be delivered to Buyer. Seller shall configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than ten (10) MW per minute. Buyer is not required to provide this Project as a participating resource in a regional market.

(B) [Reserved].

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Solar Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week. Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly quantities of Solar Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(D) If, at any time following submission of a good faith estimate as described in Section 7.4(C) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Seller Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

ARTICLE 8
Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly Solar Energy Output Payment. Subject to the provisions of this agreement, Buyer shall accept and pay for Solar Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to (i) the sum of (a) the aggregate amount of Solar Energy Output (MWh) delivered to Buyer at the Point of Delivery from the Project, plus (b) the Deemed Energy resulting from Compensable Curtailment, multiplied by (ii) the Solar Energy Output Payment Rate. The Solar Energy Output Payment Rate is the sole payment from Buyer to Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Solar Energy Output Payment Rate includes all Taxes.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this agreement consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this agreement for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, Monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this agreement (in Dollars) to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

the Test Period). Each such invoice shall show information and calculations, in reasonable detail, including an Attestation and Bill of Sale verifying the associated RECs and Environmental Attributes, if applicable, in the form of EXHIBIT G-2 ("**Attestation and Bill of Sale**").

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this agreement, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this agreement shall be made in Dollars in immediately available cleared funds by wire transfer or electronic funds transfer into the relevant account specified in this agreement 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 agreement 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 lower of (i) the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) and (ii) the maximum interest rate allowed by Applicable Law ("**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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. A Party must notify the other Party of any error within three hundred sixty-five (365) Days of such error.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this agreement occur. The Parties further acknowledge their understanding that, under Applicable Law, no Gross Receipts Tax is applicable to the sale or delivery of Solar Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Solar Energy Output and on Buyer's payment and Seller's receipt of amounts due under this agreement provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Solar Energy Output to Buyer pursuant to this agreement.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, value 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement and implement the provisions in this agreement in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this agreement 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 agreement, including Section 9.9 below, all payments between the Parties under this agreement 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 agreement, including damages and other payments that are owed by a Party to the other Party pursuant to this agreement. Undisputed and non-offset portions of amounts invoiced under this agreement 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 agreement, 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 agreement.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this agreement 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, Applicable Law and this agreement. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer Monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key Project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent Monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-13-16 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 Day 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 62-13-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not modify, alter, or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed Solar Capacity, annual performance, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this agreement and any documents ancillary hereto, neither this agreement 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 O – Commissioning and Testing Process. Seller shall be responsible for any delays in the Commercial Operation Date, on a day for day basis, associated with Seller's failure to comply with the timelines and Buyer coordination requirements outlined herein.

(B) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least sixty (60) 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this agreement, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this agreement, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this agreement, 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 agreement, and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five-minute and real-time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet all requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this agreement. 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, Section 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

of Electrical and Electronic Engineers standards and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Days written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than thirty (30) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of O (collectively, the "**Operating Procedures**"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity and Solar Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this agreement, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this agreement. 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 calendar year. Should Buyer desire to change the reporting dates noted above, the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the November 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's generation, including the duration of such event. Each Scheduled Maintenance Outage will be subject to approval by Buyer, not to be unreasonably withheld. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Project's generation for any reason 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. Prior notice and Buyer approval shall not be required if such project maintenance is required for safety, Emergency Conditions, or compliance with Applicable Law and cannot be delayed until the next Scheduled Maintenance Outage.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Metered Output to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. After the start of the Test Period, Seller shall not sell or divert Solar Energy Output to any Person other than Buyer.

10.8 Commissioning Performance Tests. Commissioning Performance Tests shall be performed to verify compliance of the solar photovoltaic plant net AC capacity at the Point of Delivery with the Guaranteed Solar Capacity.

(A) Seller shall conduct a performance test prior to the Commercial Operation Date in accordance with applicable provisions of this Section 10.8 (the "**Commissioning Performance Test**"). The Commissioning Performance Test shall be determined to be satisfied when the Performance Test Ratio determined from the Commissioning Performance Test results in a value greater than or equal to 1.0 without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. In the case that the Performance Test Ratio determined from the Commissioning Performance Test is below 1.0, Capacity Shortfall Damages shall be due from Seller in accordance with Section 3.8 of this agreement. Capacity Shortfall Damages shall be applied to a Delayed Capacity value equivalent to the Guaranteed Solar Capacity multiplied by (1 - the as-tested Performance Test Ratio) and then multiplied by the Capacity Shortfall Damage rate identified in Section 3.8.

(B) The Commissioning Performance Test shall be conducted in accordance with ASTM E2848-13, except where deviations are provided in this Section 10.8(B).

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(1) The reporting conditions will be developed in accordance with ASTM E2939-13 and will utilize site measured irradiance and ambient temperature data collected during the Commissioning Performance Test. The same reporting conditions will be used for computing the Model Rated Power and Test Rated Power using their respective regression equations.

(2) The Commissioning Performance Test period will include at least five (5) days of data and at least fifty (50) filtered data points.

(3) Model Rated Power and Test Rated Power shall account for losses to the Point of Delivery.

(4) The result from the Commissioning Performance Test is the ratio of Test Rated Power to Model Rated Power (the "**Performance Test Ratio**").

(5) "**Test Rated Power**" shall be the value produced by the regression of filtered site measured power and site measured weather data evaluated at the reporting conditions, adjusted by Seller for any unavailable equipment during the Commissioning Performance Test.

(6) "**Model Rated Power**" shall be the value produced by the regression of filtered Commissioning Performance Test PVsyst model power and filtered model weather data evaluated at the reporting conditions, adjusted by Seller for any unavailable equipment during the Commissioning Performance Test.

(7) The Model Rated Power will be calculated using the Commissioning Performance Test PVsyst model. Site measured POA irradiance will be used as the irradiance input to the Commissioning Performance Test PVsyst model.

(8) The PVsyst model utilized by Seller to predict the annual generation forecasts included in L will be used as the PVsyst model for initial comparison to the actual site performance during the Commissioning Performance Test. Such PVsyst model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of the Commissioning Performance Test.

(C) Proposed terms associated with the guarantee, the required irradiance conditions, degradation allowances, modeling software inputs, and the methodology to be utilized for validation of the Guaranteed Solar Capacity shall be provided by the Seller and subject to mutual agreement of the Parties.

10.9 [Reserved].

10.10 [Reserved].

10.11 Weather Stations.

(A) Seller shall, at Seller's cost and no later than the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

meteorological stations ("**Weather Stations**") at the Project Site to monitor and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by Seller's engineer and agreed to by Buyer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall be of a grade equivalent to or better than those used in large-scale utility solar facility installations and include the capability for measuring, indicating, and recording ambient temperature, barometric pressure, wind speed and direction (instantaneous and average), and relative humidity. Seller shall submit to Buyer for review and approval, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules, current inverters, and other prominent features, as applicable. The Weather Stations shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to be maintained by Seller and to provide an unrestricted, real-time indication of all measured parameters to Buyer, and the data shall be available to Buyer via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted (subject to Seller's software licenses) real-time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations. Data collected from the Weather Stations shall be utilized for determination of the Performance Test Ratio, minimum solar irradiance for determination of system availability, and lost output due to curtailment or outages.

10.12 Monthly Operational Report. Not later than the fifteenth (15th) Day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**") in a form to be provided by Buyer prior to the Commercial Operation Date. The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Solar Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; Plane of Array irradiance data; 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. If any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

ARTICLE 11
Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer within ten (10) Days of the RECs being created in WREGIS and available for transfer. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within ten (10) Days after written notice from Buyer of such failure, and such failure is due to Seller's fault or negligence. The RECs and Environmental Attributes transferred under this agreement are bundled with the associated Energy.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this agreement, but not used, sold, assigned or otherwise transferred during the Term of this agreement. Buyer may, to the extent permitted by Applicable Law and this agreement, assign its rights, title and interest in and to any RECs and Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this agreement or any successor provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(E) Seller shall, at its sole expense and prior to the commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the creation and tracking all Renewable Energy Certificates associated with all Metered Output, including Test Energy. Such actions shall include installing a meter on the low side of Seller's step-up transformer connected to the ESS and ensuring that all corresponding WREGIS Certificates are issued, tracked, and transferred to Buyer in a timely manner. The Parties acknowledge that Seller's registration of the Project with WREGIS requires achievement of the Commercial Operation Date. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account.

(F) Seller shall register the Project, as necessary, no later than thirty (30) Days after Buyer notifies Seller of the availability of such Environmental Attributes, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(G) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, which shall be Public Service Company of New Mexico, unless agreed to otherwise by Buyer.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(H) Neither Seller nor Buyer will have any liability to the other for any act, omission, misrepresentation, or breach (other than an act or omission due to the failure to pay fees, charges or expenses by the responsible Party), by an entity that certifies the characteristics or delivery of a REC, or the qualification of the Project as a renewable energy facility, under Applicable Law. The certifying entity may include a Governmental Authority, WREGIS or other generation information system, an independent auditor or other third party.

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this agreement (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 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 Energy, RECs or Ancillary Services committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this agreement or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this agreement, or other date mutually agreed to by the Parties in writing;

(7) Seller's failure to deliver RECs in accordance with the terms of this agreement on more than three (3) occasions in any rolling thirty-six (36) consecutive month period;

(8) The Project fails, after the third anniversary of the Commercial Operation Date, to maintain an Actual Solar Availability Percentage of at least eighty percent (80%) over two (2) successive Commercial Operation Years; provided, however, for a single occurrence during the Term of this Agreement for a period of no longer than two hundred seventy (270) days, if the Project suffers an MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Actual Solar Availability

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Percentage calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(8);

(9) The Project fails to obtain an Actual Solar Availability Percentage of at least fifty-five percent (55%) over any Commercial Operation Year; provided, however, for a single occurrence during the Term of this agreement for a period of no longer than two hundred seventy (270) days, if the Project suffers an MPT Failure, and only to the extent Seller takes prompt and commercially reasonable steps, as determined by Buyer, to replace or repair such main power transformer, the impacts of such MPT Failure shall be excluded from the Actual Solar Availability Percentage calculation for the purpose of establishing Buyer's termination rights under this Section 12.1(A)(9); or

(10) Seller's assignment of this agreement, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The failure of Seller to make any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

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

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer; or

(5) Seller's failure to deliver RECs in accordance with the terms of this agreement, unless remedied within five (5) Business Days of receipt of notice of such failure.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to deliver Solar Energy Output to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

any agreements (including the Interconnection Agreement) required to deliver Energy to the Point of Delivery;

(3) Seller's failure to make any payment due to Buyer under or in connection with this agreement (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 agreement);

(4) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this agreement;

(5) Seller's failure to maintain in effect any agreements required to deliver Solar Energy Output to the Point of Delivery;

(6) Seller's failure to comply with any other material obligation under this agreement, which would result in a material adverse impact on Buyer; or

(7) Seller fails to register the Project within WREGIS or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this agreement.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this agreement shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise;

(4) Buyer's assignment of this agreement except as permitted in accordance with Article 18; or

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this agreement) shall constitute an Event of Default upon the failure of Buyer to cure within thirty (30) Days of written notice from Seller to Buyer.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period; or

(2) Any representation or warranty made by Buyer in this agreement shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this agreement 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 agreement 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 agreement as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include an amount of cover damages equal to Replacement Energy Costs minus the product of (x) the quantity of Solar Energy Output so replaced and (y) the Solar Energy Output Payment Rate; *provided, however, that for any*

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer. 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 Solar Energy Output 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 RECs, Environmental Attributes, and Future Environmental Attributes pursuant to this agreement, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this agreement for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes and any 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 Solar Energy Output produced by Seller following such Event of Default, plus, to the extent that Seller is unable to produce Solar Energy Output due to the Event of Default of Buyer, an additional quantity equal to the amount of Solar Energy Output that would have been produced by Seller absent such Event of Default of Buyer, each multiplied by the Solar Energy Output Payment Rate; provided that the foregoing amount shall be reduced by an amount equal to (A) the amount of any revenues that Seller, using commercially reasonable efforts, is able to obtain by selling Solar Energy Output to a third party or into the market, less (B) Seller's costs and expenses incurred to effectuate any such sales, but in no event less than Zero Dollars ($0.00). Seller shall use commercially reasonable efforts to avoid, minimize or mitigate Seller's damages.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this agreement 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 agreement, 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 agreement 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 agreement. Upon the termination of this agreement 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. 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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.

(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.

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 agreement.

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 agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this agreement, 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 agreement satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this agreement, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this agreement, 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this agreement, 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 agreement shall be addressed to the other Party at the addresses noted in 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 agreement to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on D to this agreement. 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 agreement 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 agreement.

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 agreement, 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 agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this agreement. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) monthly construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Solar Energy Output from, the Project in accordance with this agreement, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this agreement, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Solar Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the Solar Units.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only, and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this agreement, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this agreement. 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 agreement.

13.7 Exhibits. Either Party may change the information for its notice addresses in D at any time without the approval of the other Party. EXHIBIT A, EXHIBIT B, EXHIBIT C, and 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 agreement 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 agreement, 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. If 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. If 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**" means an event or circumstance that arises, after the Execution Date, that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this agreement. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Solar Energy Output of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws; (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 agreement beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of two hundred seventy (270) 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 agreement 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 agreement, 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 agreement (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. If any delay or nonperformance results from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement 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 its effects impact the ability of:

(A) Seller to deliver Energy from the Project to the Point of Delivery, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours and Seller Curtailment in connection with the Solar Energy Output payment;

(B) Buyer to receive Energy from the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours and Compensable Curtailment in connection with the Solar Energy Output payment; or

(C) both Buyer and Seller to perform the acts described in (A) and (B), then the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours and Seller Curtailment in connection with the Solar Energy Output payment.

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Mexico. 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 agreement.

(B) The execution, delivery, and performance of its obligations under this agreement by Seller have been duly authorized by all necessary company action, and do not and will not:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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 agreement;

(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 agreement; 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 agreement) 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 agreement.

(C) The obligations of Seller under this agreement are valid and binding obligations of Seller.

(D) The execution and performance of this agreement 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 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 agreement have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have upon the generation of Solar Energy Output, good and marketable title to the RECs, Environmental Attributes, and Future Environmental Attributes.

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

(L) All right, title and interest in and to the RECs, Environmental Attributes and Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this agreement, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade.

(P) This agreement does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(Q) This agreement does not grant Buyer an option to purchase the Project or any portion of the associated assets at any time during or after the end of the Term.

(R) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this agreement.

(B) The execution, delivery, and performance of its obligations under this agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this agreement;

(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 agreement; 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 agreement) 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 agreement.

(C) This agreement is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this agreement 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 agreement 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 within thirty (30) Days of the annual insurance policy renewal or update or change of the insurance policy, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with G-1 and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

liability under this agreement 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 agreement shall cover occurrences during the Term of this agreement on an "occurrence" basis. If 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 G-1 within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this agreement, to request Seller to modify the insurance minimum limits specified in G-1 in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, and its respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this agreement 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 G-1 names Buyer and its respective 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 G-1 shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ARTICLE 17
Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the agreement. 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 agreement to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of NMPRC Approval in connection with (i) the execution and performance of this agreement; and (ii) any waivers as set forth in Buyer's request for approval of this agreement (collectively, "**Requested Actions**"). An NMPRC order that defers action on cost recovery to a future case shall not be a material adverse financial order. In particular:

(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 with no material adverse financial determination, which final written order is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, *provided* that each of Seller and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then this agreement shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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 will amend this agreement to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this agreement. If the Parties are unable to mutually agree on any amendments to this agreement to address such NMPRC Approval order, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval by 11:59 P.M. of December 31, 2026 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for 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 agreement, 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement by Seller to an Affiliate of Seller; (ii) a Seller Permitted Transfer; or (iii) any assignment or transfer of this agreement 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), (ii) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) 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 agreement.

(B) Seller's consent shall not be required for any assignment of this agreement by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, or consolidation of Buyer or its parent corporation, *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 such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this agreement as and if required by NMPRC regulations and will resell the Solar Energy Output hereunder.

18.2 Conditions on Transfers. If the rights and interests of a Party in this agreement 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 agreement 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 agreement with the Affiliate as if such Person had been named under this agreement; *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 agreement made without fulfilling the requirements of this agreement shall be null and void and shall constitute an Event of Default pursuant to Article 12.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

18.5 Subcontracting. Seller may subcontract its duties or obligations under this agreement 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 and licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this agreement by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, (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 agreement; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this agreement 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 agreement 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 third-party 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 agreement.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this agreement 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 agreement; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this agreement and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this agreement 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed Solar Capacity, (the "**Development Security**"), the first Fifty Thousand Dollars ($50,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Fifty Thousand Dollars ($50,000) per MW of which will be posted no later than eighteen (18) months prior to the Expected Commercial Operation Date. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed Solar Capacity (the "**Delivery Term Security**"). Seller shall replenish the Development Security and Delivery Term Security, as applicable, to such required amount within fifteen (15) Days after any draw by Buyer. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or Capacity Shortfall Damages and provided the Delivery Term Security. If no amounts are due and owing under this agreement and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) Day after termination of this agreement in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer:

(a) cash, (b) a Letter of Credit in form acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be 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 Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) Days before expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or ten (10) Business Days if the only event is that the credit rating of the issuer bank of a Letter of Credit has fallen below the Issuer Minimum Requirements) (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this agreement, 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 the Development Security or Delivery Term Security, as applicable to recover any amounts owing to it arising out of this agreement, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this agreement. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this agreement, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this agreement.

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 ("**Buyer's Indemnified Persons**"), 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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 ("**Seller's Indemnified Persons**"), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. If 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 to the applicable Governmental Authority all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Solar Energy Output that are imposed on the making available of Solar Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid to the applicable Governmental Authority all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Solar Energy Output that are imposed at and from the taking of Solar Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this agreement and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22
Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this agreement, 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 agreement, 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,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this agreement, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this agreement shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this agreement whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this agreement, 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 agreement 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 agreement.

22.5 Relationship of the Parties.

(A) This agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this agreement 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 agreement, 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 agreement 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 agreement with a view toward effecting the purposes of this agreement 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 agreement constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this agreement, this agreement 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 agreement, 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 agreement are for ease of reference only and do not constitute a part of this agreement.

22.12 Counterparts. This agreement 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. The interpretation and performance of this agreement 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 agreement shall be brought in the United States District Court for the District of New Mexico; the Parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

agree to such jurisdiction and venue. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED**.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "**Receiving Party**" refers to the Party receiving information from the other Party.

(B) Other than in connection with this agreement, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, 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 agreement. 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). To the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this agreement 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 agreement (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic), and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf), or which concerns this agreement, the Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this agreement. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this agreement:

(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 Receiving Party's Representatives;

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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 agreement, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this agreement, 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 agreement, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this agreement that relates solely to this agreement 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 agreement, 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, prior to disclosure, inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall immediately notify Buyer 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

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

(A) Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this agreement and the Environmental Attributes that are to be generated under this agreement and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this agreement and the creation, sale or retirement of such Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this agreement or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

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 agreement, 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 agreement. 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

consummating such transactions, and Buyer shall be responsible for Seller's reasonable third-party costs associated with assisting Buyer in such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this agreement constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code §101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this agreement (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 agreement, 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 Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

22.19 Telephone Recording. Each Party to this agreement 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 agreement. 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. If a dispute occurs between

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this agreement, the Parties shall negotiate in good faith to amend this agreement to resolve such changes in order to effect performance of this agreement, at the least possible cost to the Parties, consistent with this agreement, including Section 7.4(A). To the extent that the Parties are unable to do so, either Party may initiate the process set forth in Section 13.8.

[Signature page(s) follow]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

IN WITNESS WHEREOF, the Parties have caused this agreement to be duly executed as of the date first above written. This agreement shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Laurie Williams B87ED845D25E4D9...

Name Laurie A Williams

Title Senior Vice President

WILDCAT SOLAR POWER PLANT LLC

By _____

Name Jun Hayakawa

Title President of DEI Green Investment Co., sole member of Wildcat Solar Holdings LLC

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT A
DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE

1. Name of Seller's Project: Wildcat Solar Facility

2. Location: Comprised of approximately 960 acres of public and private land in McKinley County, New Mexico, located along Defiance Draw Road, and approximately 8 miles northwest of the City of Gallup: Sections 25 and 36, Township 16 North, Range 20. The project coordinates are 35°35'03.4"N, 108°55'01.8"W.

3. Owner (if different from Seller): N/A

4. Operator: Daiwa Energy & Infrastructure Co, Ltd.

5. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Solar PV

   b. Total number of units at the Project: Comprised of 181,440 620W bifacial solar modules, and 28 modules per string.

   c. Total nameplate capacity: 90 MW

   d. Additional technology-specific information: Project is designed utilizing Single Axis Trackers, 33% GCR, and 1.25 Inverter Load Ratio.

   e. Project includes: Comprised of 116 840kW inverters, with 5 inverters per skid, and typically mounted with a 4.2MVA step-up transformer at 34.5kV. 23 total 4.2MVA skids.

6. Project Schedule:

Key Milestone	Date
LGIA Execution	September 3, 2024
Major Equipment Supply Agreements Executed	March 31, 2027
Discretionary Permits	March 31, 2027
Close Financing	March 31, 2027
30% Design Complete	September 31, 2026
Start of Project Construction	June 30, 2027
First Major Equipment Delivered to Site	September 31, 2027

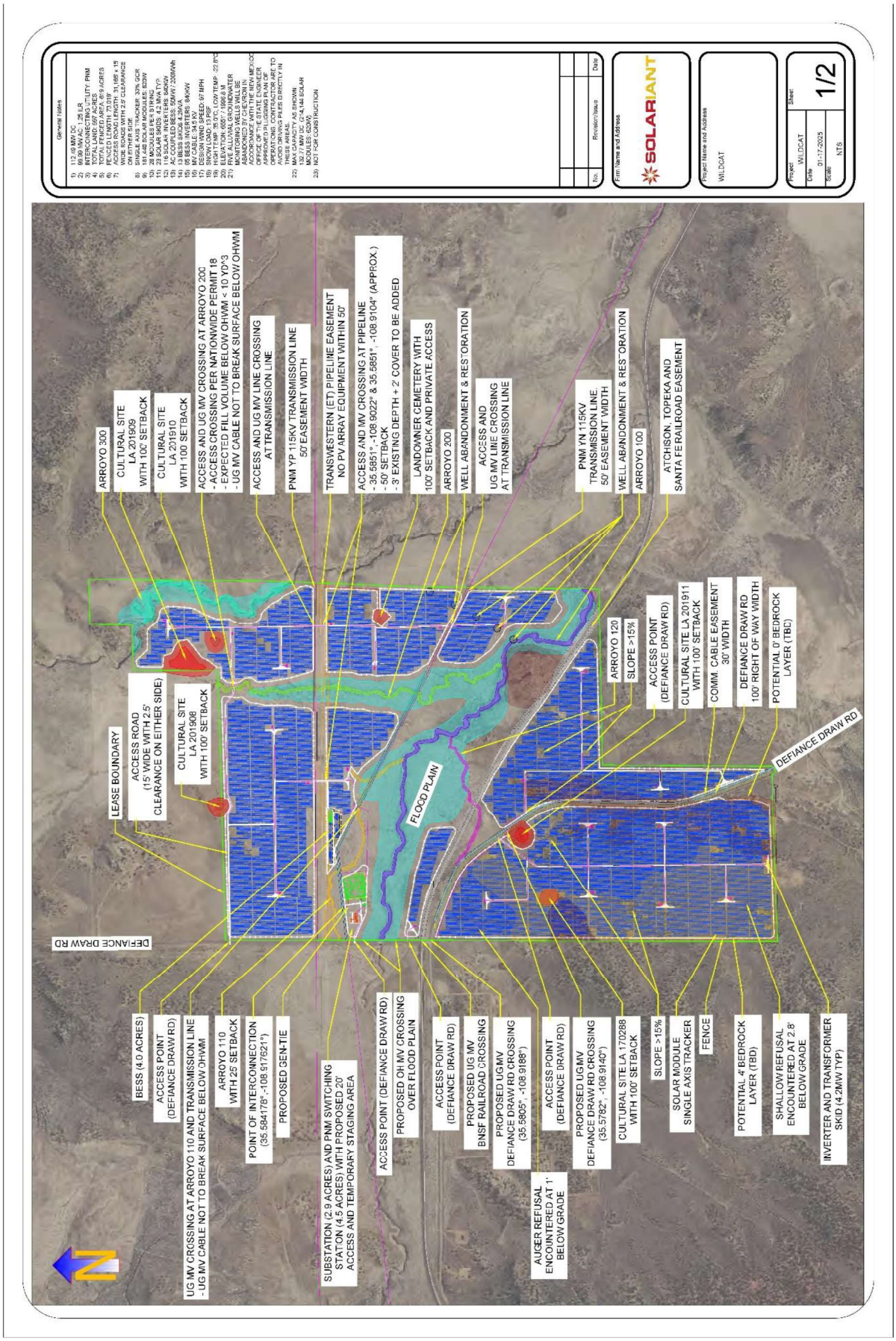
Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Interconnection In-Service Date	December 31, 2028
Commissioning Start Date	March 31, 2029
Expected Commercial Operation	April 30, 2029
Guaranteed Start Date	September 27, 2029

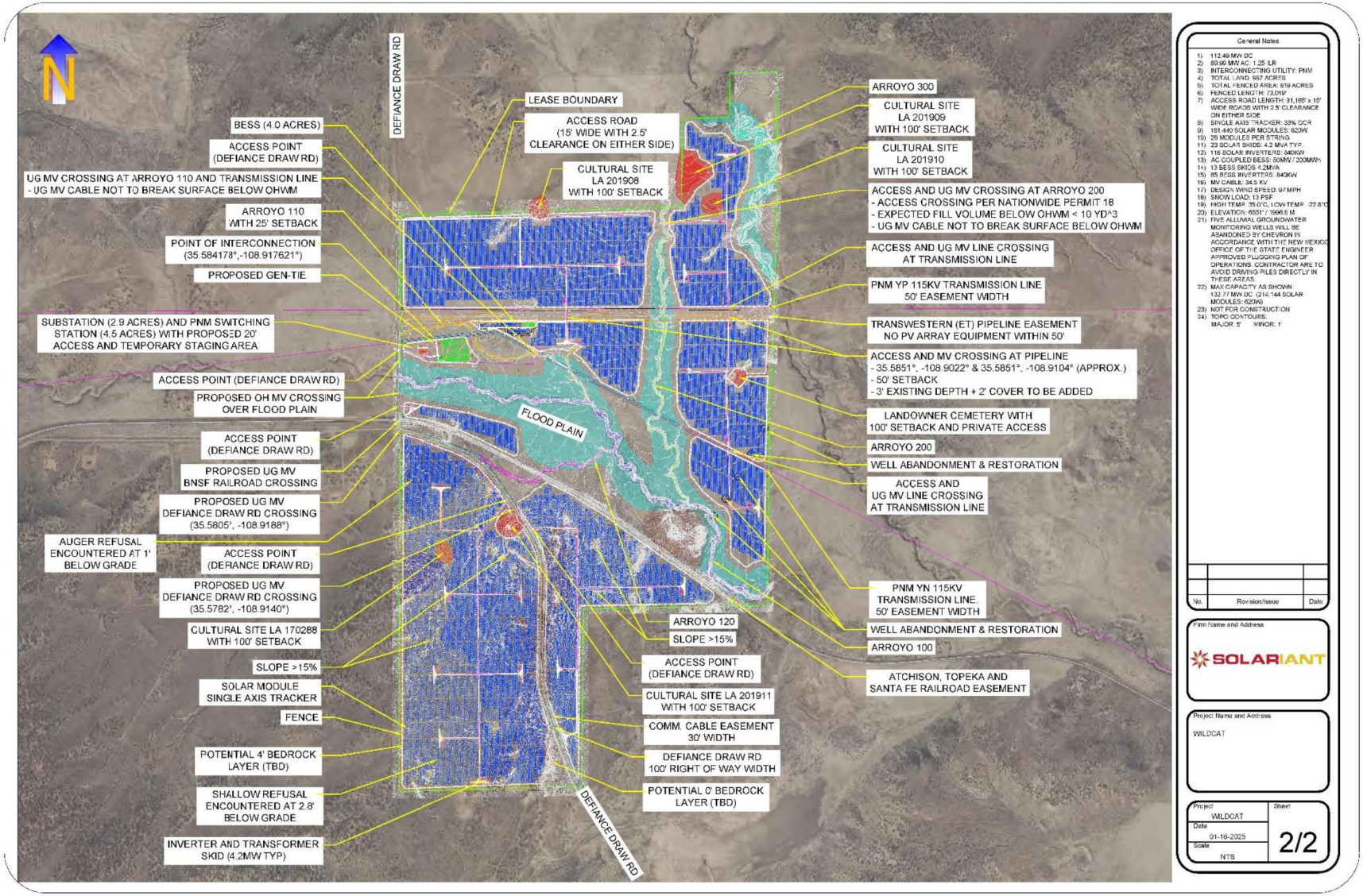
7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Site Map



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT B
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:

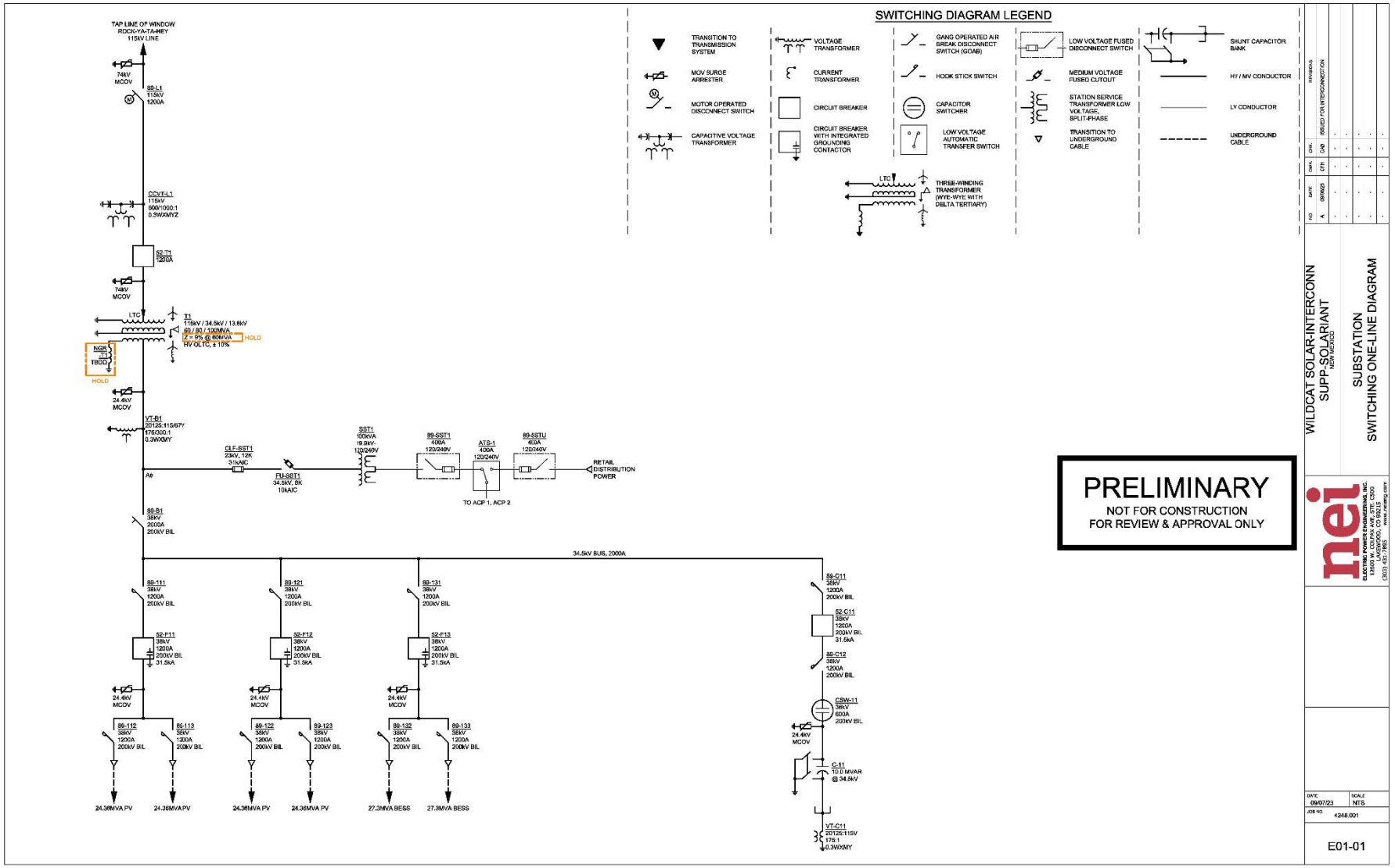
   - Interconnection Facilities;
   - the network upgrades;
   - the Electric Interconnection Point;
   - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
   - communications and telemetry configuration with associated redundancy;
   - the House Energy power 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 Electric Interconnection Point (on PNM's Window Rock – Yah-Ta-Hey 115kV line (YN)).

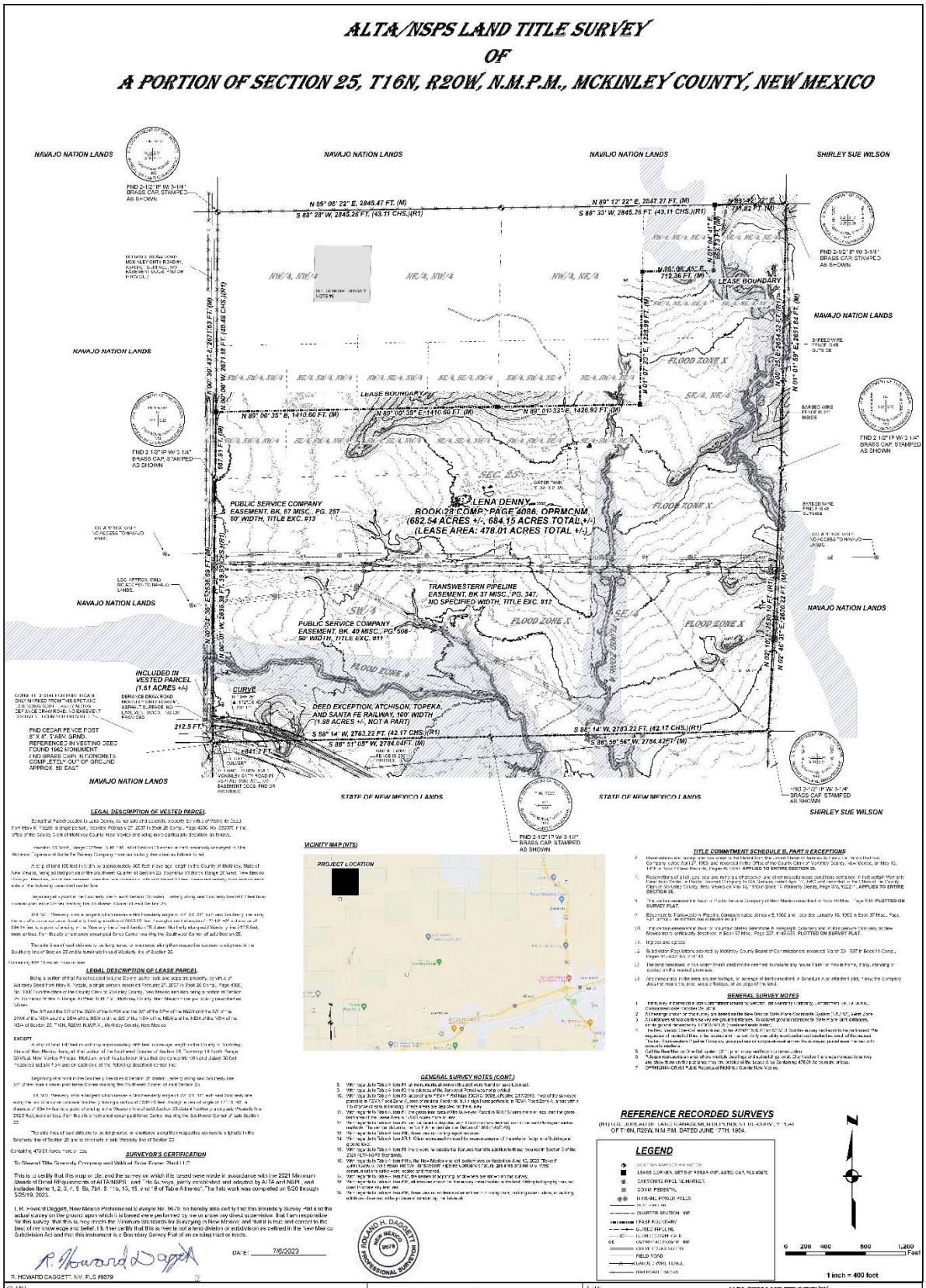
Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

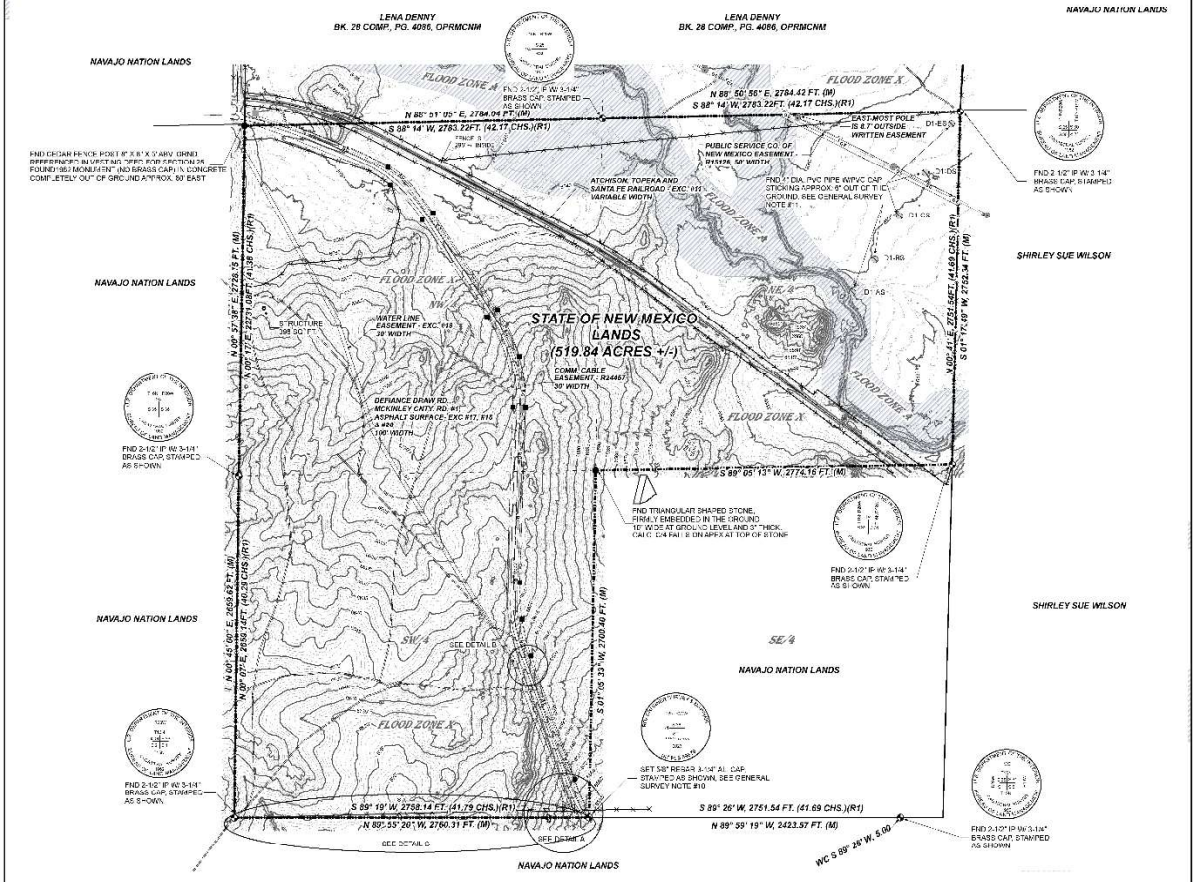
EXHIBIT C
DESCRIPTION OF SITE[1]

[1]NTD: To be updated ~60 days prior to COD.

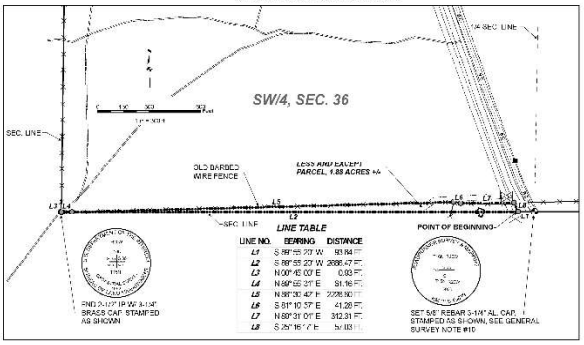

ALTA/NSPS LAND TITLE SURVEY
OF
A PORTION OF SECTION 25, T16N, R20W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO
NAVAJO NATION LANDS
SHIRLEY SUE WILSON
LEASE BOUNDARY
FLOOD ZONE X
SEC. 25
LENA DENNY
BOOK 28 COMP. PAGE 4086, OPRMCNM
(682.54 ACRES +/-, 684.15 ACRES TOTAL +/-)
(LEASE AREA: 478.01 ACRES TOTAL +/-)
PUBLIC SERVICE COMPANY
EASEMENT, BK. 67 MISC., PG. 257
50' WIDTH, TITLE EXC. #13
TRANSWESTERN PIPELINE
EASEMENT, BK 37 MISC., PG. 347,
NO SPECIFIED WIDTH, TITLE EXC. #12
PUBLIC SERVICE COMPANY
EASEMENT, BK. 40 MISC., PG. 506
50' WIDTH, TITLE EXC. #11
INCLUDED IN
VESTED PARCEL
(1.61 ACRES +/-)
CURVE
DEED EXCEPTION, ATCHISON, TOPEKA,
AND SANTA FE RAILWAY, 100' WIDTH
(1.98 ACRES +/-, NOT A PART)
STATE OF NEW MEXICO LANDS
LEGAL DESCRIPTION OF VESTED PARCEL
LEGAL DESCRIPTION OF LEASE PARCEL
SURVEYOR'S CERTIFICATION
VICINITY MAP (NTS)
PROJECT LOCATION
TITLE COMMITMENT SCHEDULE B, PART II EXCEPTIONS
GENERAL SURVEY NOTES
GENERAL SURVEY NOTES (CONT.)
REFERENCE RECORDED SURVEYS
LEGEND
1 inch = 400 feet
WILDCAT SOLAR POWER PLANT LLC
ROADRUNNER SURVEY & MAPPING, INC
ALTA/NSPS LAND TITLE SURVEY
OF
A PORTION OF SECTION 25, T16N, R20W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO
2023-010

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ALTA/NSPS LAND TITLE SURVEY
OF THE N/2 AND A PORTION OF THE SW/4 OF
SECTION 36, T16N, R20W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO



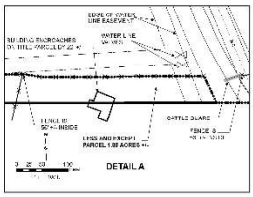
DETAIL C: LESS AND EXCEPT PARCEL

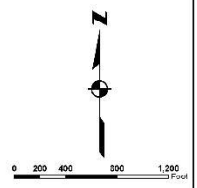


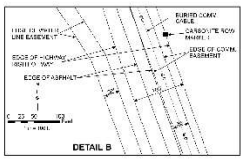
LINE TABLE		
LINE NO.	BEARING	DISTANCE
L1	S 89°55'20" W	93.84 FT.
L2	S 89°55'20" W	2666.47 FT.
L3	N 00°45'00" E	0.83 FT.
L4	N 89°02'37" E	91.16 FT.
L5	N 89°30'47" E	2226.50 FT.
L6	S 81°10'57" E	41.28 FT.
L7	N 89°31'01" E	312.31 FT.
L8	S 25°16'17" E	57.03 FT.

NOTE:

REFERENCED PRIOR SURVEYS







LEGEND

SURVEYOR'S CERTIFICATION

To Stewart Title Guaranty Company and Wildcat Solar Power Plant, LLC:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements of ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 1, 2, 3, 4, 6, 8b, 7b1, 8,11b, 12, 15, and 16 of Table A thereof. The field work was completed on 5/20/2023 through 5/25/2025.

I, R. Howard Daggett, New Mexico Professional Surveyor No. 9679, do hereby also certify that this Boundary Survey Plat and the actual survey on the ground upon which it is based were performed by me or under my direct supervision; that I am responsible for this survey; that this survey meets the Minimum Standards for Survey in New Mexico; and that it is true and correct to the best of my knowledge and belief. I further certify that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act and that the only visible Boundary Survey Plat of record is hereon.

R. Howard Daggett

DATE: 10/30/2024

R. HOWARD DAGGETT, N.M. P.L.S. #9679

SURVEY FOR:	WILDCAT SOLAR POWER PLANT LLC
SURVEYED BY:	ROADRUNNER SURVEY & MAPPING, INC
2139 Roadrunner Trl. Hesse, TX 76692	Tele.: (254) 796 7074 e-mail: info@roadrunnersm.com
TITLE:	ALTA/NSPS LAND TITLE SURVEY OF THE N/2 AND A PORTION OF THE SW/4 OF SECTION 36, T16N, R20W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO
FIELD DATE(S):	5/20/2023 - 5/25/2025
DRAWN BY:	KHD
CHK:	KHD
DATE PLOTTED:	
PROJECT NO.	2024-025
SHEET NO.	1
NO. OF SHEETS	2

REVISIONS		
DATE	BY	DESCRIPTION
06/2023	KHD	ADDRESSEE QUERY COMMENTS
10/2024	KHD	UNKNOWN LANDS MAP ADDITION
3/2025	KHD	ADDRESS QUERY COMMENTS

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ALTA/NSPS LAND TITLE SURVEY
OF THE N/2 AND A PORTION OF THE SW/4 OF
SECTION 36, T16N, R20W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO

VICINITY MAP (NTS)

LEGAL DESCRIPTION OF TITLE PARCEL

BEING THE N/2 AND THE SW/4 OF SECTION 36, TOWNSHIP 16 NORTH, RANGE 20 WEST, NEW MEXICO PRINCIPAL MERIDIAN, MCKINLEY COUNTY, NEW MEXICO

CONTAINING 519.84 ACRES MORE OR LESS.

LEGAL DESCRIPTION OF LEASEHOLD PARCEL FOR WILDCAT SOLAR POWER PLANT LLC

BEING THE N/2 AND THE SW/4 OF SECTION 36, TOWNSHIP 16 NORTH, RANGE 20 WEST, NEW MEXICO PRINCIPAL MERIDIAN, MCKINLEY COUNTY, NEW MEXICO

LESS AND EXCEPT

A TRIANGULAR SHAPED PARCEL OF LAND BEING 1.86 ACRES, MORE OR LESS, BEING AND ALONG THE SOUTH LINE OF THE SW/4 OF SAID SECTION 36 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A SET 3-½" ALUMINUM CAP STAMPED "PLS #9679" FOR THE SOUTH QUARTER CORNER OF SAID SECTION 36;

THENCE S 89° 35' 20" W, 99.84 FEET ALONG THE SOUTH LINE OF THE SW/4 OF SAID SECTION 36 TO THE **TRUE POINT OF BEGINNING** FOR THIS DESCRIPTION;

THENCE S 89° 35' 20" W, 2366.47 FEET ALONG SAID SOUTH LINE TO A FOUND 3-½" BRASS CAP STAMPED "BUREAU OF LAND MANAGEMENT, 1962", FOR THE SOUTHWEST CORNER OF SAID SECTION 36;

THENCE N 00° 45' 00" E, 0.93 FEET ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36 TO AN OLD BARBED WIRE FENCE;

THENCE N 89° 35' 31" E, 101.16 FEET ALONG SAID OLD FENCE;

THENCE CONTINUING ALONG SAID OLD FENCE, N 88° 30' 42" E, 2228.80 FEET;

THENCE CONTINUING ALONG SAID OLD FENCE, S 81° 10' 57" E, 43.28 FEET;

THENCE CONTINUING ALONG SAID OLD FENCE, N 89° 31' 01" E, 3123.5 FEET;

THENCE LEAVING SAID OLD FENCE, S 25° 16' 57" E, 57.03 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 517.98 ACRES MORE OR LESS.

GENERAL SURVEY NOTES

1. This survey is based on a Title Commitment by Stewart Title Guarantee Company, Commitment Number 2023060159, issued on July 26, 2023 at 5:00 pm.
2. All measured bearings shown on this survey are based on the New Mexico State Plane Coordinate System Grid, NAD 83 (2011), West Zone.
3. All measured distances shown on this survey are ground distances. To convert ground distances to State Plane Grid distances, divide ground distances by 1.00027758125 (combined scale factor).
4. The New Mexico One-Call was not Flec (Ticket #23MY150901) on 5/15/2023 of the survey field work to be performed. We requested a buried utilities to be located and marked. Only one utility was located and marked as result of the request. The communications cable lying along the east side of Defiance Draw Road was marked with pin flags.
5. Call the New Mexico One-Call system (811) prior to any excavation or construction.
6. OR/MKN M- Official Public Records of McKinley County, New Mexico.
7. COMM= Communications.
8. (M) - Measurements made as part of this survey.
9. (R1) – Reference to prior survey of the vested parcel.
10. The South Quarter Corner was not found. It was re-established by single proportionate measurement on an angle line as set forth in the Bureau of Land Management Manual of Instructions for The Survey Of Public Lands, 1947, Section 372.
11. This information was provided by Client. The five points shown in the Northwest Quarter of Section 36 are ground water monitoring wells owned by Chevron Onshore Rental Management Company. The wells range in depth from 29 to 61 feet deep. The monitoring program was abandoned in 1983.
12. With regards to Table A item #1, all monuments for the title parcel shown or this survey plat were found or set. A limestone monument for the Line and Encroachment were not set.
13. With regards to Table A item #2, the address of the surveyed parcel was not provided.
14. With regards to Table A item #3, according to FEMA Firm Map 35031C1500E, effective 2/17/2010, most of the surveyed parcel is in FEMA Flood zone X, area of minimal flood risk, but a significant portion is in FEMA Flood Zone A, zone with a 1% chance of annual flooding. These areas are depicted on the survey.
15. With regards to Table A item #4, the gross land area of the vested parcel is 519.84 acres more or less and the gross land area of the Leased old parcel is 517.98 acres more or less.
16. With regards to Table A item #5, the vertical relief is denoted with 1 foot contours, derived from Lidar and Photogram metric methods. The vertical datum is the North American Vertical Datum of 1988 (NAVD 88).
17. With regards to Table A item #6b, no zoning report was provided therefore the zoning and setback requirements of the surveyed parcel are unknown.
18. With regards to Table A item #7(c), Client expressed no need for measurements of the exterior footprint of buildings at ground level.
19. With regards to Table A item #8, there were no substantial features found in addition to those required in Section 5 of the 2021 ALTA/NSPS Standards.
20. With regards to Table A item #11b, the New Mexico one-call system was contacted on June 15, 2023 (Ticket # 23MY150901). The only response was to locate and mark the communications cable running along the east side of Defiance Draw Road. The cable was marked with pin flags.
21. With regards to Table A item #13, The names of adjoining land owners are shown on this survey.
22. With regards to Table A item #15, all features shown on this survey were located in the Field. Orthophotography was not used to locate any features.
23. With regards to Table A item #18, there was no evidence of recent earth moving work, building construction, or building additions.

SURVEYOR'S CERTIFICATION

To Steve Title Guaranty Company and Wildcat Solar Power Plant LLC:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements of ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 5, 6b, 7(a), 8, 11b, 13, 15, and 16 of Table A thereof. The field work was completed on 5/20/2023 through 5/23/2023.

I, R. Howard Daggett, New Mexico Professional Surveyor No. 9679, do hereby also certify that this Boundary Survey Plat and the actual survey on the ground upon which it is based were performed by me or a near my direct supervision; that I am responsible for this survey, that it is in accordance with the Minimum Standards for Surveying in New Mexico, and that, to the best of my knowledge and belief, I further certify that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act and that this instrument is a Boundary Survey Plat of an existing tract or tracts.

R. Howard Daggett — DATE 10/30/2024

R. HOWARD DAGGETT, NM. PLS #9679

R. HOWARD DAGGETT — NEW MEXICO — 9679 — PROFESSIONAL SURVEYOR

TITLE COMMITMENT SCHEDULE B, PART II EXCEPTIONS

1. Rights or claims of parties in possession not shown by the Public Records.
2. Easements, or claims of easements, not shown by the Public Records.
3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.
4. Any lien, claim or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or Loan Policy).
6. Water rights, claims or Title to water.
7. Taxes for the year 2023, or thereafter.
8. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the Proposed Insured acquires for value of record the estate or interest or Mortgage thereon covered by this commitment.
9. Reservations, terms and conditions contained in the Patent from the United States of America to the State of New Mexico recorded August 24, 1976 in Book 89 Misc., Pages 450-460, #163,536 (NW and NW ¼). **AFFECTS ENTIRE LEASEHOLD PARCEL.**
10. Purposely Omitted.
11. Easements as references on the Plat for Right of Way for Spur Track, recorded January 24, 1969 at #86,505. **AFFECTS THE LEASEHOLD PARCEL. SHOWN ON PLAT.**
12. Terms and Conditions contained in Coal Leases recorded July 24, 1974 at #161,046 and recorded July 27, 1978 at #181,855. **AFFECTS ENTIRE LEASEHOLD PARCEL.**
13. Right of Way Easement from the New Mexico State Land Office to the City of Gallup, recorded January 15, 1980 at #93,605. **DOES NOT AFFECT LEASEHOLD PARCEL.**
14. Purposely omitted.
15. Terms and Conditions contained in Memorandum of Oil & Gas Lease Option Agreement by and between Cerro Land Company and Sancha Energy Company, recorded July 3, 2000 in Book 2 Comp, Pages 1630-1631, #247,487. **DOCUMENT PROVIDED REFERS TO OTHERS NOT PROVIDED. CANNOT MAKE A DETERMINATION.**
16. Terms and Conditions contained in Memorandum of Oil & Gas Lease Option Agreement by and between Lynam Coal Company and Santa Fe Energy Company, recorded July 3, 1990 in Book 2 Comp, Pages 1632-1633, # 251,882. **DOCUMENT PROVIDED REFERS TO OTHERS NOT PROVIDED. CANNOT MAKE A DETERMINATION.**
17. Right of Way from the State of New Mexico ex: Commissioner of Public Lands to McKinley County, recorded February 7, 2005 in Book 24 Comp, Pages 936-941, No. 317031. **AFFECTS LEASEHOLD PARCEL. SHOWN ON PLAT.**
18. Easements as referenced on Right of Way Survey prepared by TePaa Engineering & Surveying LLC, recorded August 4, 2005 in Plat Cabinet "E", Folio No. 184, No. 308983. **AFFECTS LEASEHOLD PARCEL. SHOWN ON PLAT.**
19. Grant of Right of Way from the State of New Mexico Commissioner of Public Lands to USPHS, DHHS, IHS, Navajo Area Indian Health, recorded November 19, 2018, at DOC# 387032. **AFFECTS LEASEHOLD PARCEL. SHOWN ON PLAT.**
20. Grant of Right of Way from the State of New Mexico Commissioner of Public Lands to McKinley County Board of Commissioners, recorded November 29, 2018 at DOC# 387034. **AFFECTS LEASEHOLD PARCEL. SHOWN ON PLAT.**
21. Terms and Conditions contained in the Lease by and between the State of New Mexico and Wildcat Solar Power Plant LLC, a New Mexico limited liability company, to be recorded.
22. Intrusion of the Fence inside the North, East, Southern of the Fence along the East & West lot lines, encroachment of the Fence over the Southeast corner into adjacent property; and encroachment of the neighboring property's Fence and building inside the South lot line; all as referenced on ALTA/NSPS Land Title Survey prepared by Roadrunner Survey & Mapping, Inc., dated July 6, 2023.
23. Defiance Draw Road McKinley County Road # 1 located within insured lot, as referenced on Boundary Survey prepared by Roadrunner Survey & Mapping, Inc., dated July 6, 2023
24. Easements as referenced on Boundary Survey prepared by Roadrunner Survey & Mapping, Inc., dated July 6, 2023.
25. Property located within Flood Zone X and Flood Zone A as referenced on Boundary Survey prepared by Roadrunner Survey & Mapping, Inc., dated July 6, 2023.
26. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel in, on under and that may be produced from the Land, together With all rights privileges, and immunities relating thereto, whether or not appearing in the public records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
27. Any statement in the area, square footage or acreage of land described in Schedule A or attached plat, if any. The Company does not insure the area, square footage, or acreage of the land.
28. The land described in the commitment shall not be deemed to include any house trailer or mobile home, if any, standing or located on the insured premises.
29. Ingress and egress.
30. Rights of tenants under leases, recorded or unrecorded.
31. No policy can be issued without further underwriter approval.
32. Terms and Conditions of document(s) described in Schedule A.
33. Purposely Omitted.
34. Purposely Omitted.
35. All other valid and existing rights, restrictions, reservations, covenants, conditions, rights-of-way, lease and easement affecting the granted land, including but not limited to matters on file in records of the New Mexico State Land Office.
36. Reservation by the State of New Mexico of all mineral of whatsoever kind, in, under or upon the Land, including but not limited to, oil and mineral gas, helium, carbon dioxide, coal and lignite, uranium, brine, salt, copper, iron, zinc, talc, barite, gold and silver, precious and semi-precious stones are jewels, caliche, building stones, shale, clay sand, gravel, and all commercially valuable rock; all of the foregoing whether or not now known to exist or to have value, or whatever form or type, at whatever depth; in whatever natural deposit, whether solid, semi-solid, liquid, or gaseous, whether similar or dissimilar to any of those minerals enumerated, and regardless of the method of extraction, whether by wells (including injection wells), mining (including by subterranean, open-pit, or strip mining), surface or subsurface leaching, or dissolution, or any other means now or hereafter known or employed.

CLIENT	WILDCAT SOLAR POWER PLANT LLC				ROADRUNNER SURVEY & MAPPING, INC		TITLE	ALTA/NSPS LAND TITLE SURVEY OF THE N/2 AND A PORTION OF THE SW/4 OF SECTION 36, T16N, R20W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO			
DATE 7-2023	BY: RHD	REVISIONS			2120 Roadrunner Dr	Web: (575) 390-0124	FIELD WORK: 5/20/2023 - 5/23/2023	TECH: RHD	DRAWING NO.: 2024-025	SHEET NO.: 2	OUT OF SHEETS: 2
DATE 10-29-2024	BY: RHD	DESCRIPTION: ADJUSTMENTS AND COMMENTS			Reeve, TX 79852	Email: info@rrsurveyor.com	DRAWN BY: RHD	CHK'D BY: RHD			
DATE 10-30-2024	BY: R. H.	DESCRIPTION: ADDRESSED CLIENT COMMENTS					SURVEYED BY: RHD	CHK'D BY: RHD			

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT D
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

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

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

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

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:
Wells Fargo Bank
ABA# 121000248
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

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

WILDCAT SOLAR POWER PLANT LLC

All Notices/Invoices:

Delivery Address:
1 Riverway Suite 1700, Houston, Texas 77056
Attn: DEI Green Investment Co.
Phone: (713) 640-8611

With copy to:
Gran Tokyo North Tower 1-9-1, Marunouchi, Chiyoda-ku, Tokyo 100-6730
Attn: Daiwa Energy & Infrastructure Co, Ltd.
Phone: +81-3-5555-6100

Mailing Address (if different from above):
N/A

Wire Transfer: Flagstar Bank, Routing # 026013576, Account # 1504481197 DEI GREEN INVESTMENT

With additional Notice of an Event of Default, termination and other legal notices to:
Attn: Paul Zarnowiecki
Address: Orrick, Herrington & Sutcliffe LLP
2100 Pennsylvania Avenue NW
Washington, D.C. 20037
Phone: (202) 339-8452

Project Manager:
To be updated pursuant to Section 10.1(D)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

Public Service Company of New Mexico
Attention: Laurie Williams
414 Silver Ave. SW Albuquerque, NM 87102
Telephone: (505) 241-0641
Fax: [•]

With a copy to:

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT E
SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
Section 10 Rivers and Harbors Act	U.S. Army Corps of Engineers (USACE) Albuquerque District
Clean Water Act, Section 404 (Nationwide)	U.S. Army Corps of Engineers (USACE) Albuquerque District
National Pollutant Discharge Elimination System	New Mexico Environment Department + EPA
National Historic Preservation Act, Section 106 Concurrence	New Mexico Department of Cultural Affairs, Historic Preservation Division
State Threatened and Endangered Species	New Mexico Department of Game and Fish
Rule 551 (§ 17.9.551, New Mexico Administrative Code)	New Mexico Public Regulation Commission
Building and Electrical	New Mexico Construction Industries Division
Site Access Road Permit	McKinley County, and New Mexico Department of Transportation

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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT F
COMMISSIONING TESTING

Commissioning Tests

- String Insulation Resistance and Continuity Tests
- String V_{oc} measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- SCADA Functionality Test (or equivalent)
    - Automatic Generation Control (AGC) Functionality Test (or equivalent)
    - Voltage Setpoint Functionality Test
    - Historian Data Link Functionality Tests (See Section 3.4)
    - Project Reliability Test
        a. Commissioning Performance Test (See Section 10.8)

Commissioning Tests

- Commissioning Performance Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

A.1 SCADA Functionality Test

Purpose:

This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources. This includes all relevant status, analog, accumulator, and control points. Relevant points shall be determined through discussions between the Seller (who provides a list of all available points) and Buyer's Power Operations Engineering ("**POE**"). This test must be performed prior to energization of the Project.

Procedure:

Prior to testing, the Seller shall coordinate with the Buyer's transmission engineering team (or agreed upon third party) to create a SCADA points list and send to the Buyer's POE team. The Seller or third party shall program the Buyer's Remote Telemetry Unit (RTU) and validate the communication between this RTU and the Seller's RTU. This team shall

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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.

A.2 **Automatic Generation Control (AGC) Functionality Test**

Purpose:

This test will demonstrate the ability of the Project to synch to AGC. This test will occur after the Project has energized.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

System starting state:

The Project will be in the on-line state and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile in CAISO prior to the start of testing.

Procedure**:**

Prior to testing, the Seller (or agreed upon third party) shall contact Buyer's POE Team four (4) to six (6) weeks in advance to request a time to perform the checkout.

At the time of test, the Seller or third party shall arrange a communication line between Buyer's POE and on-site personnel. The Seller or third party arranging the call shall have access to program the on-site RTU. All testing phases require both POE and Buyer's Operator support.

The test shall include Remote, Local, and Market Mode testing, as described below. This test must be conducted between 20-40 min after the start of the hour to prevent conflicts with start and end of hour operational activities.

Remote Mode Testing

Seller will set the Project to REMOTE mode, and verify the Project accepts AGC.

- Operator will send a setpoint to the Project
- Validate the Project responds to the setpoint
- Operator will send a setpoint above and/or below Project operation limits
  - Validate the Project sends alarms

Buyer's Operator will set the AGC Control mode to MARKET:

- Validate the Project responds to a DOT from CAISO
- Validate the setpoint and feedback matches the DOT

Buyer's Operator change the Project to MARKET in AGC

- Validate the Project changes the control mode

Buyer's Operator will set the AGC Control mode to AUTO and Regulation mode to REG

- Hold for up to 10 minutes
- Validate the Project responds to ACE of +/- 10 MW

Local Mode Testing

On-site personnel change the Project to LOCAL mode

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

- Validate the Project changes from REMOTE to LOCAL mode
- Validate the Project follows gross MW requested on-site
- Validate the Project does not respond to setpoint changes

System end state:

The Project will be in the on-line state and with control mode set to LOCAL.

B. 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 agreement and solar equipment manufacturer's then-current operating and testing requirements.

C. Buyer Data Link Functionality Test

The Buyer Data Link will facilitate transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Project control.

Prior to testing, the Seller shall provide a list of available data points to Buyer's generation engineering team (or agreed upon third party) and assist as necessary to set up the Buyer Data Link.

Seller shall prepare and submit to Buyer a Data Link Functionality Test procedure no later than ninety (90) Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Buyer Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Buyer Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This process will be similar to the SCADA Points list review that Buyer's Power Operations Engineering completes for SCADA points to Buyer's energy management system. Testing will confirm that Buyer is receiving the required point.

D. Project Reliability Testing

D.1 Operational Reliability

A. Purpose of Test

To demonstrate the short-term reliability of the Project.

B. Test Procedure

The Project shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

The operational reliability test shall be satisfied when the Project remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any material alarms, faults, trips, or manual intervention required.

E. Performance Testing

Purpose

This Section outlines the procedures and requirements for the Commissioning Performance Test ("**Performance Test**"), and will verify the plant is operating according to specification by achieving the Guaranteed Solar Capacity during the Commissioning Performance Test, under and pursuant to Section 10.8 of this agreement.

Definitions

"Performance Test PVsyst model" – The Performance Test PVsyst model including any post-processing that is based on the as-built drawings and adjusted for degradation, soiling, and albedo as discussed within this EXHIBIT F.

"Minimum Data Points" – Occurs when at least 150 allowable 5-minute qualifying data points meeting the requirements set forth in this EXHIBIT F are recorded after all data filtering has occurred as outlined herein.

"Model Rated Power" – The value produced by the regression of filtered PVsyst model power and filtered model weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Model Rated Power as calculated shall account for losses to the Point of Delivery and shall be determined using the procedures outlined herein. Parties shall work in good faith to adjust losses in the event they are impacted by additional project phases on a shared line. Regression of Model Rated Power data points shall be performed for the 30 Days centered about the Performance Test Measurement Period and for data points that are within +/- 20% of the Reporting Condition Total Plane of Array Irradiance.

"**Reporting Conditions**" – The Total Plane of Array Irradiance (POA_{total}), ambient temperature, and wind speed calculated by taking the median of the measured data set during the Performance Test Measurement Period will be used as the reporting conditions using the procedures outlined in general accordance with ASTM E2939 and this EXHIBIT F.

"**Performance Test Measurement Period**" – The period when the Performance Test is performed, which period shall be at least five (5) Days and shall continue for consecutive additional days until the Minimum Data Points have been met, which may be up to a total of 10 days, depending on weather conditions during the test. If after 10 days the Minimum Data Points have not been achieved, the data collected will be used provided at least 150 qualifying data points of 5 minute duration have been collected. Notwithstanding the above, if the Parties mutually agree that a sufficient quantity of qualifying data points have been collected during a test to determine an accurate test result, the duration of the Test and the quantity of required qualifying data points required herein may be reduced.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Performance Test Ratio**"– The Test Rated Power divided by the Model Rated Power, calculated to the nearest 0.1%.

"**Revenue Meter**" – The revenue meter for the Project shall be the revenue grade Primary Metering Device installed at the high side of each GSU, or as otherwise mutually agreed by the Parties.

"**Test Rated Power**" – The value produced by the regression of filtered site measured power and site measured weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test. The Test Rated Power of the generating facility shall account for losses to the Point of Delivery and shall be calculated using the procedures outlined herein.

"**Total Plane of Array Irradiance (E_{TOTAL})**" – The sum total of the front plane of array irradiance and the rear plane of array irradiance multiplied by the Bifaciality Factor of the modules as shown in Equation 1 below. For Test Rated Power the E_{REAR} will also be multiplied by the Rear Shading Factor defined in Table 2 of Appendix 2 to account for loss between the rear POA sensor and the module.

Equation 1:

$$E_{TOTAL} = E_{POA} + E_{REAR} * \varphi * R_{SH}$$

Where

E_{POA} = Measured front side POA
E_{REAR} = Measured rear side POA
j = Bifaciality Factor as defined on the manufacturer's datasheet
R_{SH} = Rear shading factor

Performance Test Procedure

1. Battery system will be turned off over testing interval. In the event battery impacts performance or completion of test, parties will work in good faith to cease battery operations or modify procedure.

2. At least one hundred twenty (120) Days prior to the first day of the first Performance Test Measurement Period, a draft Performance Test plan, including a detailed Performance Test procedure shall be submitted to the Buyer by the Seller for Buyer's review and comment. The Performance Test procedure shall:

   2.1 be in general accordance with ASTM E2848 and ASTM E2939 or other ASTM standards as mutually agreed by the Parties;

   2.2 include the PVSyst model to be utilized for determination of Model Rated Power. The PVSyst model for the Commissioning Performance Test shall result in a total annual generation forecast that meets or exceeds the annual generation forecast included in L;

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

2.3 include the 8760 generation forecast resulting from the PVSyst model, including the following columns;

2.3.1 Date & Time (MM/DD/YYYY hh:mm)

2.3.2 Plane-of-Array Irradiance Front (Globinc, W/m2)

2.3.3 Plane of Array Irradiance Rear (GlobBak, W/m2)

2.3.4 Module Temperature (TArray, °C)

2.3.5 Ambient Temperature (TAmb, C)

2.3.6 Near Shadings Beam Loss (ShdBLss, W/m2)

2.3.7 Inverter Limitation due to Minimum Voltage (IL_Vmin, kW)

2.3.8 Inverter Limitation due to Maximum Power (IL_Pmax, kW)

2.3.9 Available Energy at Inverter Output (EOutlnv, kW)

2.3.10 Energy Injected into Grid (E_Grid, kWh)

2.4 include the linear regression coefficients for the full 8760 generation forecast; and

2.5 include a completed Appendix 2 of this EXHIBIT F, including the PVSyst model inputs and assumptions utilized in the PVSyst model.

Seller shall incorporate all of Buyer's reasonable comments into the final Performance Test plan and Performance Test procedure and resubmit the same for Buyer's confirmation of conformance with this Exhibit and applicable ASTM standards (such approval not to be unreasonably withheld or delayed).

3. The Seller shall give written notice to the Buyer in accordance with Section 10.2 of this agreement for the Commissioning Performance Test.

4. Seller shall perform the Performance Test in accordance with the final approved Performance Test procedures described within this Exhibit and any agreed modification thereof.

5. Performance Test procedures shall identify the final Reporting Conditions and Model Rated Power using the Performance Test PVsyst model, and data filters described below.

6. The following input parameters shall be measured during the Performance Test (collectively, the "Input Parameters"):

- Front Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the front side of the PV array in the Project during the qualifying data points.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Any significant shading during any aggregation interval is cause to exclude that data record from the regression.

- Rear Plane-of-Array Irradiance (POA): The average measured irradiance incident upon the rear side of the PV array in the Project during the qualifying data points.

- Ambient Temperature: As recorded by the Project meteorological stations as defined in Appendix 1 to this EXHIBIT F.

- Wind Speed: As recorded by the Project meteorological stations as defined in Appendix 1 to this EXHIBIT F.

- Soiling: Soiling loss in the Performance Test PVsyst model shall utilize the lesser of (i) the measured value during the test, (ii) values measured on site from mutually agreed PV array samples or (iii) a value of 1.25% or otherwise as mutually agreed by the Parties.

- Revenue Meter Energy Generation: Energy as recorded by the Revenue Meter and accounting for losses to the Point of Delivery during the Performance Test Measurement Period.

- Inverter-Level Power Generation: AC output data for each inverter shall be provided for the purposes of identifying periods of inverter clipping.

- Inverter-Level Power Factor: Power factor output data for each inverter shall be provided for the purposes of identifying periods of inverters performing outside of the designed power factor threshold.

7. During the Performance Test Measurement Period, irradiance, power generation and other data shall be reported at no greater than one (1) minute intervals, consisting of averaged sampled data. All data shall be reported in time-synchronized intervals.

8. Data shall be averaged and filtered in accordance with the procedures below:

   8.1 Missing Data: Missing records shall be marked as missing with a non-numeric identifier. Missing records shall not have a value included in the analysis but shall be documented. At least 75% of sensors for each measured parameter must be operational to consider data points as valid.

   8.2 DAS Equipment Malfunction: Data records with invalid Input Parameters (e.g. all sensor readings reported as out of range by the DAS) shall also be marked as invalid. If more than a few averaging intervals in a data collection period are affected by DAS errors or equipment malfunctions, Seller shall investigate and resolve this condition prior to proceeding with the test.

   8.3 Below Minimum Irradiance: To avoid large uncertainty in results due to increased impact of variable losses at low irradiance, all records with a minimum Total Plane-of-Array Irradiance input parameter of 400 W/m^2 or less shall be marked as

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

irradiance too low and the data will not be used in the test. This shall be in addition to the ASTM2848-9.1.6 Irradiance Out of Range requirement.

8.4 Unstable irradiance: Irradiance measurements shall be deemed stable if i) all individual sensor readings are within 10% of the average of all the sensor readings and ii) the average of all sensor readings is not more than 50 Watts per meter squared greater or less than the previous interval reading. If both conditions above are not met, the irradiance will be deemed unstable, flagged and the data will not be used in the test. This filter may be adjusted to allow for more valid data points to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

8.5 Inverter Clipping: Any intervals where the power output of one (or more) inverters is greater than 98.0% of the rated or programmed power limit. This data will be excluded from the test data.

8.6 Meter Clipping: Any interval where the power output of the Revenue Meter is greater than 98.0% of the rated Point of Interconnection limit of the generating facility. This data will be excluded from the test data.

8.7 Power Factor: Any intervals where the inverter power factor is less than ±0.95 will be excluded from the test data. This filter may be adjusted/removed to allow for more valid data points to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

8.8 Array shading by internal (array self-shading) or external (nearby objects). A schedule of expected shade times shall be defined in the Performance Test procedures. This schedule may be altered during the Performance Test. Internal shading occurring during these shade intervals identified during testing shall be noted and considered as included in the design. Photographic evidence of array conditions shall be provided.

8.9 Array shading by environmental conditions (e.g. frost, snow or debris). Onsite observers shall record time intervals when such conditions exist as the Performance Test progresses. Photographic evidence of array conditions shall be provided and records occurring during these shade intervals identified during testing shall be marked as shaded and excluded from the test.

8.10 Wind Speed: Any intervals where average wind speed is greater than 15 meter per second, trackers go into a stow position or the panels are placed into hail stow due to a hailstorm will be excluded from the test data. This filter may be adjusted/removed to allow for more valid data points to be collected during the Performance Test Measurement Period if mutually agreed by both Parties.

8.11 Any intervals impacted by system outages will be excluded from the test data including a) curtailment of the Project, b) shut down for maintenance, c) disconnection of the Project from the grid, d) power regulation by the grid operator, e) a Force Majeure Event, or f) any time when the Project is not 100% available.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

9. Data will be collected until, at a minimum, the Minimum Data Points have been achieved.

10. Using the data filtering described herein, calculate the linear regression coefficients and Test Rated Power.

11. Only data from records where input parameters are valid and within specified limits shall be used in computing capacity estimates.

12. Calculate the Performance Test Ratio using the calculated Test Rated Power and appropriate Model Rated Power. For clarity, the Test Rated Power and Model Rated Power calculations are performed in accordance with ASTM E2848 guideline, however, all procedures outlined herein will take precedence over the ASTM E2848 guidelines.

13. Seller shall not apply test tolerances or measurement uncertainty to the test data or model results. Seller shall strive to minimize test tolerance and measurement uncertainty.

Restrictions and exclusions that prevent or inhibit performance or completion of a scheduled test, as outlined in this procedure (i.e. too low irradiance over the specified interval, too many excluded intervals) shall result in rescheduling of the applicable Performance Test.

The Performance Test procedures provided by Seller to Buyer shall include (at a minimum) the following information:

- This test procedure
- Identification of key personnel and parties to be involved in the test
- The applicable Performance Test PVsyst model
    - For the purposes of the Performance Test, the Performance Test PVsyst model shall assume 100% availability.
    - Meteorological data
- Identification of the Project under test (at a minimum)
    - Number and make/model of PV modules
    - Array orientation
    - Location (latitude, longitude, street address)
    - Racking type and tilt
    - Tracker range of motion (if applicable)
    - Number and make/model of Inverters
    - Row to row spacing (ground coverage ratio)
- Identification of all data points to be monitored during the test
- The starting and ending dates of the scheduled Performance Test Measurement Period.
- Table of all sensors and transducers to be used, including cut sheets, calibration records, map of sensor locations with sufficient detail to allow observers to locate the sensors and transducers. This includes sensors required for all applicable Input Parameters (MET station sensors, inverters, and Revenue Meter).

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

- Calibration records for all instrumentation, sensors, and transducers used for the test verifying that such calibration has been performed within 12 months of the test or other such shorter period of time as may be recommended by the device manufacturer.
- All data identified in Appendix 2 to this EXHIBIT F.

Measured data is to be made available to the Buyer upon request during the Performance Test Measurement Period, for use in evaluating the progress of the Performance Test.

Performance Test Report

No later than fifteen (15) Business Days following the end of the Performance Test Measurement Period (as such may be repeated due to a re-test, if applicable), a Performance Test report will be submitted to the Buyer by the Seller. Buyer shall have ten (10) Business Days to accept or reject the results of the Performance Test report, and provide in writing any comments of Buyer on such Performance Test report. In the event that Buyer rejects all or any part of the draft Performance Test report, Seller shall, within five (5) Business Days thereafter address any comments of Buyer and re-submit the Performance Test report to Buyer. This procedure shall continue until Buyer accepts the Performance Test report. Any dispute regarding the results of the Performance Test or the Performance Test report shall be resolved as indicated in the Agreement.

The Performance Test report shall contain:

- The Performance Test procedures, including all requirements as outlined herein
- The actual start and end date/times of the Performance Test Measurement Period
- Parties present for the execution of the Performance Test
- Comments on environmental conditions during the Performance Test Measurement Period that affect the results of the test
- Performance model simulations, including all inputs, functional calculations and results
- Summary of test results
- Regression coefficients used to calculate Model Rated Power and Test Rated Power
- Comparison of test results with Performance Test Guarantee

All raw data used as input to the Performance Test shall be provided electronically (via CSV, XLS, or XLSX formats) to the Buyer with the Performance Test report.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Exhibit F
Appendix 1: Additional Requirements

Sensor Requirements

Front plane of array irradiance sensors shall be at a minimum "High Quality" classified pyranometer(s) as defined in ASTM 2848-A1.2 (Secondary Standard per ISO 9060). Pyranometers shall include device-specific characterization data that shall, at minimum, include cosine and temperature response. Alternative pyranometers may be used if necessary.

Pyranometers shall be used only within their valid calibration period and shall be cleaned at the start of the Performance Test Measurement Period and cleaned daily during the test if the Performance Test Measurement Period extends beyond one (1) week. Rear plane of array irradiance may be measured using either a high-quality reference cell (module) or a "High Quality" classified pyranometer(s) as defined in ASTM 2848-A1.2 (Secondary Standard per ISO 9060).

Measurement	Instrument Type	Test Function	Range	Accuracy
Plane of Array Irradiance	Front Facing Pyranometer Rear Facing Pyranometer	Primary for Performance Test	0 to 1600 W/m^2 285 to 2800 nm	±2.0% daily
Global Horizontal Irradiance	Pyranometer	Tertiary for Performance Test	0 to 1600 W/m^2 285 to 2800 nm	±2.0% daily
Ambient Air Temperature	Temperature Probe	Primary for Performance Test	-40°C to +60°C	±1°C
Wind Speed	Sonic Wind Sensor	Primary for Performance Test	0 – 60 m/s	±5%
PV Plant Power	PV Power Revenue Meter	Primary for Performance Test	0 to PV Power Plant size +20%	ANSI C-12.20
Inverter Power	Inverter Meter	Primary for Performance Test	determined from inverter data sheet	determined from inverter data sheet
Soiling Loss	Soiling Stations In-Field IV Curve	Primary for Performance Test Secondary for Performance Test	0 to 100%	

Multiple Measurements

Multiple Measurements shall be recorded for all environmental data throughout the Site in order to capture the operating conditions for all regions of the array.

Below are the main sensors to be used in the Performance Test:

- Front and rear plane of array irradiance (POA): Plane of Array readings shall be averaged from sensors installed.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

- Ambient Air Temperature: Ambient temperature readings shall be averaged from sensors installed.
- Wind Speed: wind speed sensors shall be averaged from sensors installed.
- Soiling Station: At least four soiling stations, averaged readings will be used for multiple stations.
- Albedometer: At least four albedometers, averaged readings will be used for multiple sensors.
- Inverter Meter: The power and power factor reading for each inverter.
- PV Plant Meter: The power reading of the Revenue Meter.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Exhibit F
Appendix 2: Performance Test PVsyst model and Reporting Conditions Definition

Performance Test PVsyst model

The requirements for the Performance Test PVsyst model to be used for evaluating the Test Rated Power is detailed in this Exhibit. This section outlines all input parameters required to create the PVsyst simulation, in the event that PVsyst electronic project files are no longer available. This section shall be populated and submitted with the Performance Test procedures.

The Performance Test PVsyst model and the post-processed 8760 generation forecast accounting for any losses outside of the model shall be included within this Exhibit. Post-processed losses shall be specifically identified in the 8760 forecast.

PVsyst model Files

Table 2-1 below provides the file names for all model files necessary to run the PVsyst simulation in the PVsyst version specified in the subsequent section. Seller shall provide all Performance Test PVsyst model files to the Buyer including all files required to recreate the PVsyst modeling files including .ond, .pan, .shd, .met, .prj and .vc files. The PVsyst version, report, and output 8760 based on the specified TMY Meteorological data source shall be provided.

Table 2-1: PVsyst File Names

PVsyst File Type	File Name

PVsyst Input Parameters

This section documents all PVsyst inputs and assumptions. Table 2-2 below provides many of the PVsyst inputs required in the simulation.

Sixty (60) Days prior to performance testing of any portion of the solar project, the corresponding PVSyst model and inputs with the resultant 8760 generation forecast shall be submitted with the test procedure for Buyer review. Testing and approval for Commercial Operation will require that a PVSyst model and associated inputs and results be provided that represents the capability to

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

fulfill a minimum total annual generation of [*] GWh per year (as identified in L) on a P50 probability basis as adjusted year over year for any applicable degradation.

Seller shall provide justification and supporting documentation for all of the circuit ohmic losses, inverter losses, transformer losses, and auxiliary loads identified in Table 2-2.

Table 2-2: PVsyst Input Parameters

Input Parameter	Value	Comment
PVsyst Software Version		
Transposition Model		
Meteorological File		
Latitude / Longitude		
Altitude [m]		
Array Orientation (PVsyst Field Type)		
Tilt		
Azimuth		0° is due South
Tracker Backtracking		
Min / Max Rotation Angle		
Number of sheds		
Ground Cover Ratio (GCR)		
Pitch [m]		
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		
Inverter Loss		
Heat Transfer: Constant loss factor		
Heat Transfer: Wind loss factor		
DC circuit ohmic loss at STC		
Module Bifaciality Factor		From datasheet (not PAN file)
Module Quality		
Mismatch [%]		

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Input Parameter	**Value**	**Comment**
LID – Light Induced Degradation [%]		
Soiling Loss [%]		
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		
Annual Average		
Incidence Angle Modifier Factors or ASHRAE b0 value		
Rear Transparency		
Rear Shade Loss		
Rear Mismatch		
Module Mounting Height		
Monthly Surface Albedo		
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		
Annual Average		
Auxiliary Loads [%]		
Nighttime Loads [%]		
AC circuit ohmic loss at STC [%]		
AC circuit MV ohmic loss at STC		
External MV Transformer No Load Loss [%]		

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Input Parameter	Value	Comment
External MV Transformer Full Load Loss [%]		
AC circuit HV ohmic loss at STC		
External HV Transformer No Load Loss [%]		
External HV Transformer Full Load Loss [%]		

Additional Losses (Post-Processed Loss)

There are multiple losses associated with an operating Project that may not be accounted for in PVsyst. Auxiliary load consumption shall be separately accounted for in the test results. Treatment of any additional adjustments impacting the Primary Metering Device in the event they impact the overall results of the test shall be as mutually agreed by the Parties.

Reporting Conditions Identification

The Reporting Conditions are to be specified **based** on the measured data set. The following procedure is recommended for identifying Reporting Conditions.

1. The Reporting Conditions shall be determined based on the measured data set. Data records shall include the measured Total Plane of Array irradiance (E_{Total}), ambient temperature and wind speed input parameters, as well as any auxiliary parameters necessary for marking data records according to the primary data exclusion criteria.

2. Apply the primary data exclusion criteria identified in Section 8 of this EXHIBIT F to the measured data records.

3. Grouping the remaining data records, compute the median values of Etotal, ambient air temperature, and wind speed. The reporting condition for Etotal irradiance shall not be less than 500 W/m², unless otherwise agreed to by the Parties.

4. Round median E_{total} irradiance to the nearest integer W/m², median temperature to the nearest °C, and median wind speed to the nearest 0.1 m/s. The calculated values represent the Reporting Conditions.

Model Rated Power Identification

The Model Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure shall be used by the Seller to calculate the Model Rated Power values.

1. To Calculate the Model Rated Power value, update and verify the applicable Performance Test PVsyst model includes the following parameters:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

a. Availability and Curtailment Losses shall be assumed 0%

b. Update soiling and albedo values

2. The Performance Test PVsyst model hourly output, after post-processing, must contain at a minimum the plane of array irradiance, the ambient temperature, wind speed, inverter energy output, modeled power generation, shade loss, and clipping loss (GlobInc, Globbak, TAmb, WindVel, EOutInv, Egrid, POI Limited, ShdBLss, and IL Pmax) respectively. For clarity:

$$\text{Model } E_{total} = \text{GlobInc} + \text{Globbak}*BF$$

BF = Module Bifaciality Factor of the bifacial modules used in the Performance Test

3. Procure data records from the Performance Test PVsyst model

4. Apply the data exclusion criteria identified in Section 8 of this EXHIBIT F to the simulation data records.

5. Calculate the regression coefficients for the Performance Test Measurement Period from filtered data with a Total Plane of Array Irradiance within +/-20% of the Total Plane of Array Irradiance Reporting Condition.

6. Calculate Model Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation below:

$$P_{RC} = E_{RC}(a_1 + a_2 \cdot E_{RC} + a_3 \cdot T_{RC} + a_4 \cdot v_{RC})$$

Where:
P_{RC} = Rated Power
E_{RC} = Total Plane of Array Irradiance Reporting Condition
T_{RC} = Temperature Reporting Condition
v_{RC} = Wind Speed Reporting Condition
a1 to a4 = Regression coefficients

Test Rated Power Identification

The Test Rated Power is a power output value estimated at the Revenue Meter, adjusted for losses to the Point of Delivery, when exposed to specified Reporting Conditions (RC) which are derived from the measured dataset.

The following procedure will be used by the Seller to calculate the Test Rated Power values.

1. Procure measured data records including the meter output and inverter output data

2. Calculate the Test E_{TOTAL}

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

$$\text{Test } E_{total} = \text{GlobInc} + \text{Globbak}*\text{BF}*\text{RearShade}$$

3. Apply the data exclusion criteria identified in Section 8 of this EXHIBIT F to the measured data records.

4. Compute regression coefficients for the Performance Test Measurement Period.

5. Calculate the Test Rated Power values for the Performance Test Measurement Period using the regression coefficients at the derived Reporting Conditions (RC) using the ASTM E2848 equation.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Exhibit F-Appendix 3: PVsyst – Simulation Report

[To be provided.]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT G-1
INSURANCE COVERAGES

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

A. Workers' Compensation Insurance that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million Dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Network Security and Privacy Liability. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

F. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost, subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

G. 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 Seller 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 Seller 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 Seller 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. Seller shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

If Seller 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT G-2
FORM OF ATTESTATION AND BILL OF SALE

Pursuant to WREGIS, _____ ("Seller") hereby sells, transfers and delivers to Buyer the RECs and Environmental Attributes associated with the generation of Energy at the Project, as detailed in the Power Purchase Agreement between the Parties dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

_____
Name of Renewable Energy Facility

_____	_____	_____
Fuel Type	Maximum Power Output (MW)	Operation Date
_____	_____	_____
Dates		MWh generated
_____, 20___		_____

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents, to the best of its knowledge, as follows:

1. to the best of its knowledge, the information provided herein is true and correct;

2. its sale to Buyer is its one and only sale of the RECs and Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such RECs and Environmental Attributes;

3. the Project identified above produced the number of MWh above during the period indicated above;

4. Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and

5. Seller owns the _____. [Name of the Renewable Energy Facility]

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the above referenced Energy.

Contact Person: _____
Phone: _____; Fax: _____
[Seller]
Signed:_____
Name:_____
Title:_____
Date:_____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT H
AVAILABILITY GUARANTEE

Section 1. Definitions.

Capitalized terms used in this H and not defined herein shall have the meaning assigned in Article 1 of this agreement.

"**Actual Solar Availability Percentage**" means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Solar Available Hours for all Solar Units that were part of the Project at the beginning of the relevant Commercial Operation Year for all Daylight Intervals, divided by (ii) the sum of all Solar Period Hours in the relevant Commercial Operation Year for all Solar Units that were part of the Project on the Commercial Operation Date.

"**Actual Solar Energy Output**" means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

"**Aggregate Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Solar Availability Damages Cap**" has the meaning set forth in Section 2(3) of this Exhibit.

"**Annual Report**" has the meaning set forth in Section 2(5) of this Exhibit.

"**Daylight Interval**" means each hour where plane of array irradiance conditions are 50 W/m2 or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

"**Guaranteed Solar Availability Percentage**" has the meaning set forth in Section 2(1) of this Exhibit.

"**Solar Availability Damages**" has the meaning set forth in Section(2) of this Exhibit.

"**Solar Available Hours**" means for each Solar Unit, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Solar Period Hours in such Commercial Operation Year, minus (b) the aggregate Solar Unavailable Hours for such Solar Unit in such Commercial Operation Year, plus (c) the aggregate Solar Excused Hours for such Solar Unit in such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

"**Solar Excused Hours**" means, in any Commercial Operation Year, the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Excused Hours for such hour

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

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

"**Solar Unavailable Hours**" means those hours a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state; (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; or (d) otherwise not operational or capable of delivering Energy to the Point of Delivery. Any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is unavailable, but for less than the full amount of its installed capacity, the Solar Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

Section 2. Solar Availability Guarantee.

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

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

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at Sixty Thousand Dollars ($60,000) per MW of Guaranteed Solar Capacity ("**Annual Availability Damages Cap**") and in the aggregate at a value equivalent to One Hundred Fifty Thousand Dollars ($150,000) per MW of Guaranteed Solar Capacity ("**Aggregate Solar Availability Damages Cap**") over the Term of the agreement.

4. Sole Remedy. Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for failure to meet the Guaranteed Solar Availability Percentage shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Sections 12.1(A)(8) and 12.1(A)(9), if and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not limit Buyer's remedies, including for Events of Default that may have caused Seller to fail to meet the Guaranteed Solar Availability Percentage.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the agreement and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this H shall be addressed as provided in Section 13.8 of the agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ATTACHMENT 1 TO EXHIBIT H

EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES

I. Example of Actual Solar Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 50 Solar Units were part of the Project.

The Solar Units had the following operating characteristics:

	Hours	Solar Units Affected	Solar Unit Hours
Solar Period Hours ("PH")	8,760	50	438,000
Solar Unavailable Hours ("UH")	500	10	5,000
Solar Excused Hours ("EH")			1,000

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

Sum of Available Hours = PH – UH + EH: 434,000 = 438,000 – 5,000 + 1,000

Actual Solar Energy Availability Percentage

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

(a) Sum of Solar Available Hours: 434,000 hours

(b) Sum of Solar Period Hours: 438,000 hours

(c) Actual Solar Availability Percentage: (Sum of Solar Available Hours/Sum of Solar Period Hours) x 100 = (434,000/438,000) x 100 = 99.1%

II. Example of Availability Damages

Example of Solar Availability Damages based on the following assumed facts:

(a) Seller's Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.

(b) Seller's Actual Solar Availability in Commercial Operation Year 4 = 85%.

(c) Solar Energy Output Payment Rate = $20.00

(d) Actual Solar Energy Output = 130,000 MWh

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

Solar Energy Output Payment Rate x (Guaranteed Solar Availability Percentage in Commercial Operation Year 4 — Actual Solar Availability Percentage for Commercial Operation Year 4) x (Actual Solar Energy Output for Commercial Operation Year 4 ÷ Actual Solar Availability Percentage for Commercial Operation Year 4 x Guaranteed Solar Availability Percentage for Commercial Operation Year 4) = Solar Availability Damage:

$$\$20.00 \times (.90 - .85) \times (130{,}000 \div .85 * .90) = \$137{,}647.06$$

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT I
FORM OF SELLER GUARANTY

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

RECITALS:

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

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

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

* * *

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

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

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 [●] duly organized and validly existing under the laws of the State of [●] and has the [●] 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 [●]proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES.

(a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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:*

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

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

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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.

* * *

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

[●]
By:_____
Name:_____
Title:_____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT J
COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by _____("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Solar Units with an aggregate capacity of at least ninety percent (90%) of Guaranteed Solar Capacity have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects.

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: _____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT K
ANNUAL DEGRADATION GUARANTEES

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT L
ANNUAL GENERATION FORECAST

The following represents the annual P50 forecast of net, AC generation delivered to the Point of Delivery. On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

Month	On-Peak Energy Delivered (MWh)	Off-Peak Energy Delivered (MWh)
January	13,363	2,900
February	15,813	2,302
March	18,761	3,956
April	22,671	3,712
May	21,315	6,078
June	26,050	4,271
July	20,939	3,496
August	21,236	4,475
September	19,948	3,312
October	19,484	2,401
November	14,026	3,060
December	11,303	2,410
Total Annual	224,908	42,374
Total Combined Annual	267,282	
Annual Capacity Factor	34%	

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT M
PPA FUNCTIONAL MAPPING

The Project's NERC verified PPA Generator Owner, PPA Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Scheduling Coordinator Contact (SCC)				

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT N
INTERCONNECTION METERING STANDARD

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Interconnection Metering Standard

Public Service Company of New Mexico

Revision 8.1
03/12/2026

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

TABLE OF CONTENTS **Page No.**

1.0 OVERVIEW 2

2.0 DEFINITIONS 3

3.0 POLICY AND APPLICATION 4
3.1 Metering Types, Ownership, and Maintenance 4
3.1.A Revenue Metering 4
3.1.B Interchange / Intertie Metering 4
3.1.C Generation Interchange Metering – Including EIM market participants 4
3.1.D Instrument Transformers 4
3.1.E Communication Equipment 5
3.2 Revenue Metering Requirements 5
3.3 Interchange / Intertie Metering 5
3.4 Generation Integration Metering – Including EIM market participants 6
3.5 General Requirements for Current Transformers 6
3.6 General Requirements for Voltage Transformers 7
3.7 Instrument Transformer Connections 7
3.8 Terminal Blocks, Test Switches, etc. 8
3.8.A Terminal Blocks 8
3.8.B Test Switches & Miniature Circuit Breakers 8
3.9 Validation of Data 9
3.9.A Revenue Metering 9
3.9.B Interchange Data 9
3.10 Testing Calibration 9
3.11 Exchange of Information 9
3.11.A Prior to Meter Installation 9
3.12 Communication Circuits/Paths 10

APPENDIX A: CO-LOCATED GENERATION FACILITIES EXHIBIT 0 – SEE ADDENDUM FOR UPDATED REVISION 12

APPENDIX B: CO-LOCATED GENERATION FACILITIES EXHIBIT 1– SEE ADDENDUM FOR UPDATED REVISION 13

APPENDIX C: CO-LOCATED GENERATION FACILITIES EXHIBIT 2– SEE ADDENDUM FOR UPDATED REVISION 14

APPENDIX D: METERING VT AND CT SCHEMATIC FOR GEN-TIE/INTER-TIE 15

RECORD OF REVISIONS 3-1

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

1.0 OVERVIEW

The purpose of this document is to enable PNM to provide an application guide for both interchange metering and generation integration metering. Interconnectors shall obtain approval from PNM for any proposed changes to systems described by this document. Changes could affect construction or energization schedules.

Interconnector shall provide PNM nameplate data including accuracy and ratings information for any interconnector-owned metering equipment. Interconnectors shall also provide system diagrams to PNM including meter locations, communications paths, and instrument transformer polarity designations. Four-wire, three element metering shall be used for all new installations unless PNM provides written approval for an exception for an unforeseen special case.

PNM prefers unrestricted and unescorted physical access to PNM owned meters and related equipment located in interconnector facilities. If such access is prohibited, then the utilities' facility management shall coordinate escorted access during normal business hours. Details of shared locks or other requirements to obtain means of unescorted access shall be defined in an agreement.

In the case that an interconnector owned meter, monitored by PNM, is to be changed, those changes must be coordinated with PNM prior to the changes. Likewise, PNM will coordinate any changes to PNM owned meters, monitored by interconnectors, prior to changes.

PNM will provide interconnectors a communications port on PNM owned meters when necessary or share metering data via control center to control center data exchange protocol ("ICCP") or other communication methods when contractual agreements require revenue metering data exchange.

For metering used in the Energy Imbalance Market (EIM), this standard requires no single point of failure in capture and communication of metering data. This includes instrument transformer redundancy: one current transformer ("CT") and one voltage transformer ("VT") per phase for each meter, primary and backup. While not preferred, separate secondary circuits of an individual VT or separate CT cores may be used to fulfill this requirement. The metering scheme shall ensure no interruption of instrument transformer input to the meters during any possible switching configuration. If an interruption is possible, an alternate source with transfer capability shall be installed. When applicable, metering instrument transformers may be located on either the LV or HV side of the interconnecting transformer. Metering constant shall be applied to allow for LV side applications to adjust for transformer losses and line losses when necessary.

The latest IEEE-C57.13 and C57.13.6 standards shall apply to all instrument transformers. Refer to PNM specifications for physical and other electrical requirements.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

2.0 DEFINITIONS

AGC - Automatic Generation Control

BA – Balancing Authority

BAA – Balancing Authority Area

BES – Bulk Electric System

BESS – Battery Energy Storage System

CCVT – Capacitor-Coupled Voltage Transformer

CT – Current Transformer

BCT – Bushing Current Transformer

CVT – Capacitor Voltage Transformer

ICCP – Inter-Control Center Communications Protocol

IPoE – Internet Protocol over Ethernet

MDMS – Meter Data Management System

NERC – North American Electric Reliability Corporation

VT– Voltage Transformer

EIM – Energy Imbalance Market

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

3.0 POLICY AND APPLICATION

While the definition of wholesale and retail load is outside of the scope of this document, it is important to note that retail loads in mixed resource facilities (i.e. BESS with PV or wind) must not be served from the transmission system provider but instead through the local distribution provider. This is to demarcate clearly and simply between retail and wholesale consumption.

3.1 Metering Types, Ownership, and Maintenance

3.1.A *Revenue Metering*

Revenue Metering is metering installed to monitor power exchanged between PNM and an interconnected third-party, for the purpose of determining payment for exchanged power. Revenue metering also refers to the metering required for generation, interchange, and load data capture where necessary for data submittal to the CAISO. Hourly or sub-hourly interval data is collected using the PNM MV-90 system, using dial-up type phone communication or Ethernet connectivity. Data is typically retrieved daily or monthly.

PNM is responsible for the collection and accuracy of metering data and will require interconnector owned meters to meet PNM's standards for metering data.

Interconnectors will maintain their meters, furnish copies of test data to PNM if requested, and invite PNM to witness testing of the meters. Likewise, PNM will maintain PNM owned meters, furnish copies of test data to the interconnector if desired, and the interconnector will be invited to witness the testing.

3.1.B *Interchange / Intertie Metering*

Interchange Metering is metering installed where PNM interconnects with another Balancing Authority Area ("BAA"). "Intertie" Metering is metering for a connection between PNM and another utility or interconnector within the PNM BAA. Data requirements are continuous MWh in, MWh out, Mvarh in, Mvarh out, MW, and Mvar for input to the AGC systems of all involved Balancing Authorities (typically supplied by the meter owner). Hourly MWh data collected at the top of each hour is required directly from the meter for schedule verification and as an accuracy check of the MW analog reporting system. Data shall be provided by the meter owner to the other BAA via ICCP.

When the Interchange / Intertie meters are located in a PNM facility, PNM will own the meter at the point of interchange, maintenance and testing will be performed by PNM. The other BAA will be allowed to witness testing and will be provided a copy of test results. When the Interchange / Intertie meters are located in a facility owned by others, PNM will require the meter conform to PNM specifications and is tested to PNM standards. PNM will be allowed to witness testing and will be provided a copy of test data. PNM will be provided a communications port on the meter when necessary and allowed to obtain metering data in addition to data exchanged via ICCP.

3.1.C *Generation Interchange Metering – Including EIM market participants*

Generation Interchange Metering is a special combination of revenue and intertie metering. It is required where a generation facility is located in the PNM BAA and connects to the PNM transmission or distribution system, either directly or through facilities owned by a third party. Metering shall be installed at both the generation site and the PNM station where the agreed upon Point of Interconnection ("POI") is located.

3.1.D *Instrument Transformers*

PNM uses the PNM transmission system for power flow directional reference. For metering purposes, "*IN*" is defined as energy flowing from an interconnector, generation station, other utility, or Balancing Authority Area to the PNM system. "*OUT*" is defined as energy flowing from the PNM system to an interconnector, generation station, other utility, or Balancing Authority Area.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

In interconnector owned stations, the interconnector typically owns the instrument transformers. The interconnector shall purchase and install equipment that meets or exceeds standards and specifications provided by PNM included in this document.

3.1.E *Communication Equipment*

PNM requires primary and backup metering systems to comply with North American Electric Reliability Corporation (NERC) Standards as well as EIM participant obligations. Each interconnected resource's metering system must have its own independent, completely redundant communications path (i.e. No single point of failure for capture and transmission of metering data to PNM). PNM requires communications to the meters directly for the MV-90 metering data collection system via either dial-up telephone network or Ethernet connection to be specified during metering system design. The meter owner shall have responsibility for any dedicated non-switched circuit leased line costs for communications to either meters or RTUs.

3.2 Revenue Metering Requirements

The revenue meter shall be a solid state, bi-directional, device that meets or exceeds ANSI C12.21 in effect at the time of design. PNM specifically requires 0.2 metering class accuracy or better. The meter shall have the ability to record at least bidirectional kilowatt-hours (kWh) and kilovolt-ampere reactive hours (kvarh) load profile data.

The revenue meter must be able to provide data accumulated over a time interval. PNM's preferred interval is one (1) hour, beginning at the top of the hour. The revenue meter must also be able to store data in a five-minute demand interval. The meter shall be equipped with storage to contain all accumulated data for 45 days minimum and may be extended to as much as 120 days in the future.

The meter must be accessible for MV-90 data retrieval via an internal dial up modem or through an RS-232 or RS-485 port or (for meters already on the PNM network) network port, depending on the selected communication path.

Test blocks and switches will be clearly labelled and located near the revenue meter. The test blocks are designed to provide a means to measure input quantities from the instrument transformers and to allow the application of test quantities.

Revenue meters will be located inside a permanent building or inside a PNM-approved enclosure.

PNM requires that watt-hour meters should be accurate to ±0.1% at unity power factor for both full and light loads and to within ±0.3% for 0.5 power factor at full load. PNM also requires that Volt-ampere reactive hour (varh) metering data should be accurate to ±0.2% at unity power factor and to within ±0.6% for 0.5 power factor.

3.3 Interchange / Intertie Metering

The interchange meters shall be solid state, bi-directional, devices that meet or exceed ANSI C12.20 in effect at the time of design. Interchange meters also shall have the ability to record and report load profile data when used jointly as a revenue meter.

The interchange meter must be able to provide instantaneous analog and hourly integrated pulse data.

The meter data (kWh and kvarh) must be accessible through a port using DNP 3.0 or must be accessible by PNM via a dedicated circuit, or the BA or other utility must provide data to PNM through ICCP.

When used jointly as a revenue meter, the meter must have an RS-232 or RS-485 port or have an internal modem installed for MV-90 data retrieval by PNM.

Interchange meters will be located inside a permanent, climate-controlled building.

Test blocks and switches will be clearly labelled and located near the interchange meter. The test blocks are designed to provide a means to measure input quantities from the instrument transformers and to allow the application of test quantities. Interchange metering design must conform to NERC Standard BAL-005 Automatic Generation Control (AGC). Both continuous analog kW signals and integrated hourly kWh readings are required for interchange metering installations. The analog kW value is used by both Balancing Authority Areas (Control Areas)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

for AGC to maintain interconnection steady-state system frequency within defined limits by balancing real power demand and supply in real-time. Use of the kWh value is mandated as an hourly check on the accuracy and completeness of the telemetered analog value.

3.4 Generation Integration Metering – Including EIM market participants

The integration of generation projects within the transmission system requires both bidirectional revenue metering and interchange metering. Generation plant revenue metering is further complicated by the potential requirement to measure relatively small amounts of energy from the transmission system to the generation plant. During these times, the local distribution service provider, which may not be PNM, is the contractual energy service provider to the generation plant interconnector.

When the generating plant is producing energy, it is required to self-supply parasitic loads. Actual generating unit output is the power production at the POI.

Facilities without BESS: While other methods are possible, the most common method of supplying plant retail aux load during periods of non-generation is by back-feed from the transmission system to the plant. Meters should use extended range and accuracy CTs so that the reverse flow to the plant will be measured with the same accuracy as the much larger generation output, as this quantity is the actual retail aux load metering and the power measured is being sold to the plant by the local distribution service provider.

Facilities with BESS: In installations with BESS behind the POI which are going to be charging from the grid, it is often required that no retail aux load will be allowed to be serviced through the POI by the transmission provider. All aux load from resources behind the POI must be supplied by the resources themselves or through the local distribution provider, preferably via a direct distribution service connection. In co-located facilities, the BESS may be required to supply aux retail loads for the other facility as well. In this latter case, the billing range of the POI meter and CT should be from max generation to the minimum expected aux load in the event the BESS are unavailable.

SSVT in co-located facilities: SSVT's should preferably NOT be installed between the resource metering and the POI. If an SSVT is connected between the POI metering and the Resource Metering, it must be approved in advance and metered separately as a retail load according to specifications of the retail service provider. It will also be subtracted out of the POI flows (treated as a separate facility) so it is not included in the EIM market.

Compensation for line and transformer losses, when utilized should be accomplished in accordance with procedures defined in the latest edition of Edison Electric Institute's "Handbook for Electricity Metering". Compensation should be accomplished by applying a correction for copper losses that are proportional to the square of the current and a correction for transformer core losses or line energization losses that are proportional to the square of the voltage. These corrections should be continuous and should be added to (or subtracted from) the watt-hours and reactive volt-ampere-hours (if/when metered) passing through the electrical point of interconnection measurement.

3.5 General Requirements for Current Transformers

CTs should meet or exceed IEEE standard C57.13, C37.13.6, and all applicable ANSI C12 Series standards that are in effect at the time of design. Refer to IEEE Standard C57.13.6 (2005) for high accuracy instrument transformers.

Metering CTs at a metering point should be used exclusively for metering with no other elements in the CT secondary circuit. In cases where instrument CTs are not available, the metering CT may be used for indicating ammeters or other PNM approved low-burden devices. This is to ensure maintenance activities do not interrupt the metering measurements.

Current transformers (CTs) shall be installed, one in each phase for a four-wire wye connected metering at the POI. The installation may include redundant CT cores or separate CT columns to support the redundant metering requirements.

Metering CTs should be located in the line to measure line currents directly and should not be connected to the meter in a differential mode where the load secondary current is the difference between two or more CTs in the substation bus located on each side of the line, as is common in a ring or breaker-and-one-half bus configuration in

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

parallel and the resulting difference in secondary current is used for line current (differential mode). Dual/multi-ratio CTs can be used only if metering is connected to the full secondary ratio unless the tapped down (intermediate) ratio(s) also provide full-rated accuracy.

Three-metering-accuracy CTs, located in the line, one per phase, shall be used as the current source for interchange, generation integration and revenue metering systems. CTs shall be positioned so they measure line current for all conditions. For main-and-transfer-bus arrangements, line CTs enable proper measurement for both the normal service condition. For ring-bus and for breaker-and-one-half arrangements, with breakers on each side of the line, in-line CTs avoid the problems of questionable accuracy encountered when secondaries from two or more breaker CTs are connected in parallel and the resulting difference in secondary current is used for line current (differential mode).

CTs must be sized for optimum metering accuracy at peak and minimum loads, considering current transformer rated accuracy, rating factor (RF) and fault current withstand capabilities.

Minimum accuracy class shall be 0.3B1.8, RF=2.0. In order to measure low currents, higher accuracy CTs may be applied (i.e., 0.15B1.8 or 0.15S1.8 class or special extended range metering CTs). The thermal current rating factor (RF not to exceed 4) must limit the secondary current to not exceed 20A for Class 20 meters. For BESS/PV/Wind Interconnections, recommended POI CT Specifications are typically based on POI limits and/or connected total GSU Transformer MVA. "TF 4.0 with 0.3 accuracy or better from T.F. to 0.2% nominal or better" is a typical spec with the CTR chosen as low as practical, accounting for appropriate thermal / altitude de-ratings.

3.6 General Requirements for Voltage Transformers

Three phase-ground connected voltage transformers shall be installed at the designated POI, connected phase to station ground. Wound VTs shall be used for applications at 115kV and below. Capacitive voltage transformers (CVT or CCVT) may be applied on EHV and UHV installations.

Accuracy rating requirements (minimum): 0.3 W, X, Y, Z (and 0.3 ZZ if applicable based on expected loading) dedicated VTs should furnish nominal 115V line to neutral to meters.

PNM prefers the following ratios for VT:

System Voltage (kV-LL)	Winding X Ratio:1	Winding Y Ratio:1
345	1800	1800
230	1200	1200
115	600	600

3.7 Instrument Transformer Connections

The wiring for the secondary circuits of metering CTs should utilize separate leads from each secondary terminal of the CT to the meter test block. When a common CT secondary return conductor is utilized, the conductor should be separate from the common return of the voltage transformers. Regardless of which method is used (i.e., separate leads or a common return conductor); the CT commons shall be grounded at only one point, preferably at the test switch near the meter. The VT commons should preferable be grounded at one point, also.

All VT secondary wiring supplying voltage to revenue meters should be a minimum of #12 AWG copper and should be limited to the minimum length necessary to complete the circuit to the metering device. Exception: SIS internal to the metering panel may be #14 AWG copper.

All CT secondary wiring supplying current to revenue meters should be a minimum of #10 AWG copper and should be limited to the minimum length necessary to complete the circuit to the metering device. Exception: SIS internal to the metering panel may be #12 AWG copper.

Short lengths of smaller conductors on switchboard panels may be utilized provided the additional burden imposed by these conductors is negligible when compared to the overall circuit burden.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

3.8 Terminal Blocks, Test Switches, etc.

3.8.A *Terminal Blocks*

PNM uses two sets of terminal blocks in the CT secondary circuits for each meter:

- One set of shorting ring-lug terminal blocks in the yard's CT junction box (or breaker cabinet for BCTs), where the CT winding wires terminate.
- One set of ring-lug terminal blocks on the billing meter control panel, where the control house cables from the marshalling cabinet terminate.

There are three sets of terminal blocks in the VT secondary circuits for each meter:

One set of terminal blocks is located within the yard's VT junction box, where the VT winding wires are terminated.

One set of terminal blocks in the marshalling cabinet, where the yard cables terminate.

One set of bolt connection terminal blocks is located on the billing meter control panel, where the control house cables from the marshalling cabinet terminate.

3.8.B *Test Switches & Miniature Circuit Breakers*

PNM uses 10-pole, current test switch blocks for the CT circuit terminations in the marshalling cabinets. The test switch blocks on the billing panels are 10-pole with 6-poles of current test switches (for CT cable termination) and 4-poles of potential test switches (for VT cable termination).

There will be two sets of current test switches in the CT secondary circuits for each meter:

- One set is located in the marshalling cabinet, where the CT secondary circuit yard cables terminate in the control house. These test switches short to ground when opened.
- Another set is located on the billing meter panel, where the CT secondary circuit panel cables terminate. When open, these switches bypass the meter's current terminals and short to ground.
- No other switch(es), test block, fuses or other quick disconnecting means shall be placed in the secondary circuits of the CTs.

There will be one set of dedicated potential test switches and a miniature circuit breaker in the VT secondary circuits for in the metering panel for each meter:

- The VT secondary circuit isolation MCB is a 3-pole, 6 amp or smaller, type K miniature circuit breaker in the billing meter panel.
- Next in series, before finally terminating at the meter's voltage inputs, are the test switches located on the billing meter panel. These switches isolate the meter's voltage terminals from the VT secondary circuits when opened.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

3.9 Validation of Data

3.9.A *Revenue Metering*

PNM's meter will be the source of certifiable final data in installations where interconnectors also install their own measurement devices.

Where applicable, revenue data may be checked against the interconnector's meters and/or SCADA data for validating purposes.

3.9.B *Interchange Data*

NERC Standards: BAL-005 Automatic Generation Control

3.10 Testing Calibration

New revenue meters should be acceptance tested. All tests should be made at nominal nameplate rating. The series test points should be at Full Load (FL), Light Load (LL) and Power Factor (PF). FL is at 5 amperes at unity power factor. LL is at 0.5 amperes (10% of FL) at unity power factor and the PF test point is at 5 amperes at 0.5 power factor.

If the revenue meters are compensated for line and/or transformer losses, they should be tested both with and without loss compensation to determine the accuracy of the compensation at each test point (i.e., FL, LL and PF). Since this requires access to an accurate and stable voltage and current source, it should be done prior to installation.

3.11 Exchange of Information

3.11.A *Prior to Meter Installation*

Prior to installation, the metering authority should furnish all stakeholders with pertinent metering information that includes but not limited to the following:

Connection diagram(s) and schematics (including station one-line/three-line, and communication diagrams.)

Type and rating of revenue meters, current and voltage transformers, and other associated devices. (Including device nameplates)

Copies of certificates of test for the metering current and voltage transformers. When certificates are not available, a typical curve for the type of transformers should be furnished, and the parties should agree on the transformer correction, if any, to be applied.

Secondary burdens applied to the voltage and current transformers.

The resistance and reactive impedance of the voltage transformer secondary leads.

The derivation of compensated metering correction, if used, and the method of compensation.

The meter information required by PNM is as (but not limited to) the below:

a. Revenue Billing

- kWh and kvarh Data

b. Interchange Accounting

- kWh Data
- kW (or MW) and kvar Data

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

c. Meter Test Data

- IN and OUT Definitions
- Revenue and Interchange Metering INs and OUTs
- Generation Integration INs and OUTs

3.12 Communication Circuits/Paths

Communication paths for revenue metering generally include the following:

MV-90 (Revenue Meter Data) to PNM'S MDMS,via IPoE or a modem connection

SCADA (Indication Meter Data) to PNM's EMS and Backup EMS (PowerOps and BCC), via IPoE to the station RTU, and fiber to the EMS(s).

Example Proposed Data Flow for Co-Located Facility:

- Metering data flow to RC through PNM meters
  - PNM POI meters (primary and secondary ION) provide metering values to RC and retain the official MV-90 billing data
  - Two serial RS485 over fiber communications paths between PNM and co-located facility to bring resource meter data to the PNM POI meters(Pri and BU PNM meters or metering-RTACS pull information from Pri and BU co-located facility metering or metering-RTACS respectively)
  - *[if SEL-735 meters or if otherwise desired, IONs may not need]*
    - 2 co-located facility metering-RTACs (1 RU total rack space 3530#MDFM) at co-located facility to provide resource meter data to PNM via RS485 (or RS232 if applicable). Function of RTACs will be to pull meter information from co-located facility resource meters over the co-located facility IP network, perform complex POI compensation calculations (which SEL 735 is not capable of on own), and provide resource metering output information to PNM meters via RS485 (or RS232 if applicable) serial connection.
    - NOTE: Recommended RTAC package 3530#MDFM includes ability to log interval data to provide a virtual check meter function for co-located facility without needing to add another set of meters to the site. (Recommendation for check meter functionality would involve also adding a SEL-TEAMs license. This package can be obtained for nominal amount by "adding" to the purchase of any one of the SEL-735 meters after the fact.)

- Metering calculations philosophy outline
  - Resources will be Compensated to POI using I^2*R method for losses, compensated resource estimates will be provided to PNM
  - Difference between PNM measured POI total and co-located facility calculated/estimated POI total to be divided amongst the resource meter registers in a proportional (or other mutually agreed upon) manner.
  - Different registers used for different resources, values provided to RC directly from the redundant PNM POI meters via the redundant PNM RTUs. These same registers provided ATF (After The Fact) billing information to Transmission Company via MV-90 from the PNM POI meters.
  - Different registers used for any retail load (if applicable, may not be applicable if properly arranged and agreed upon). These retail registers provide AFT billing information to Local Distribution Company via MV-90 from the PNM POI meters (again, only if applicable).

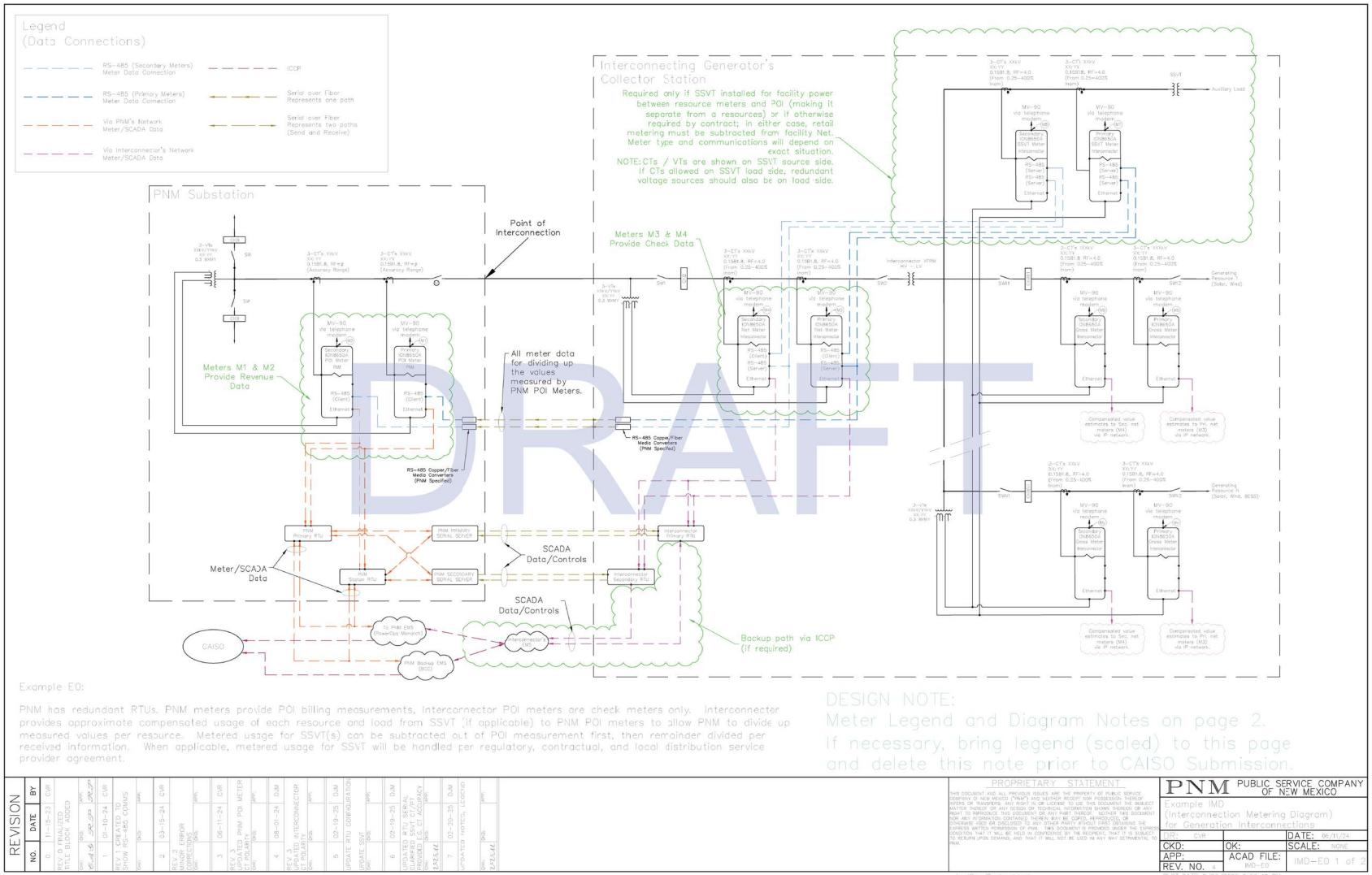
- Dial Up capability
  - *[If requested by co-located facility,]* Two phone lines provided from PNM *[typically]* using POTS over fiber converters (TC COMUNICATIONS PN TCRM195R-S-25 is the chassis which will hold the two TC1901R-L1ST-2-12 and integrated power supply).
  - PEX system will be used to reach all meters via phone extensions (TC COMMUNICATIONS PN TCRM19BR-25-25 is the chassis which will hold the four TC3848R-1-000-4-0-05 and the one TC3840R-5-000-1-1-05 cards and redundant power supplies).
  - Dial Up capability to the co-located facility meters may be used by PNM as backup in case of unexpected data loss or compensation-math integrity checks.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Other arrangements from the above example data flow may be required based on technical or contractual obligations. Please see Appendices A to C for representative example setups and additional considerations. **Final requirements must be obtained from and agreed to by PNM Transmission Power Operations and affected Local Distribution Company on a project to project basis.**

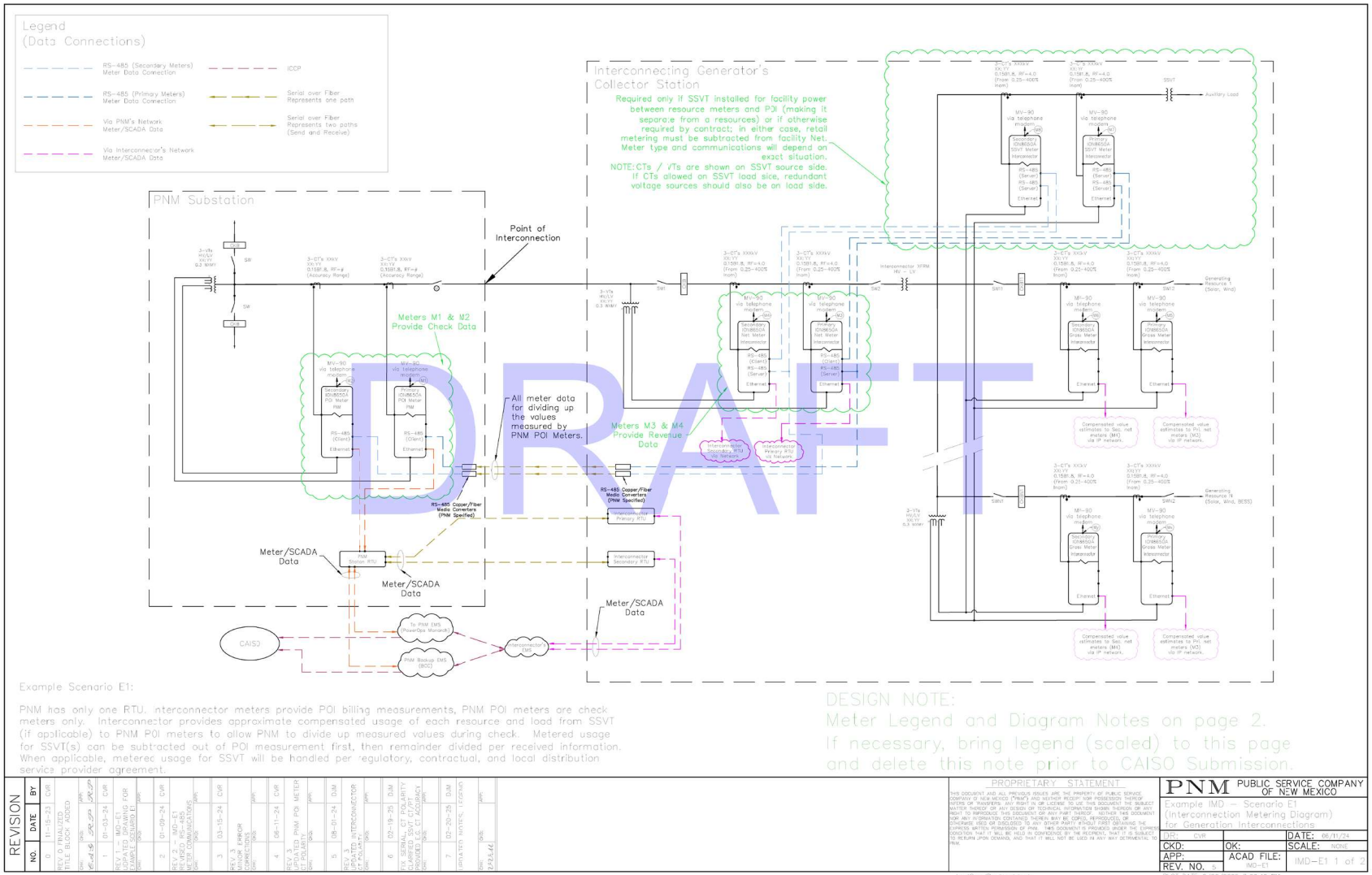
Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

APPENDIX A: CO-LOCATED GENERATION FACILITIES EXHIBIT 0 – SEE ADDENDUM FOR CLEARER IMAGE / ANY UPDATES



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

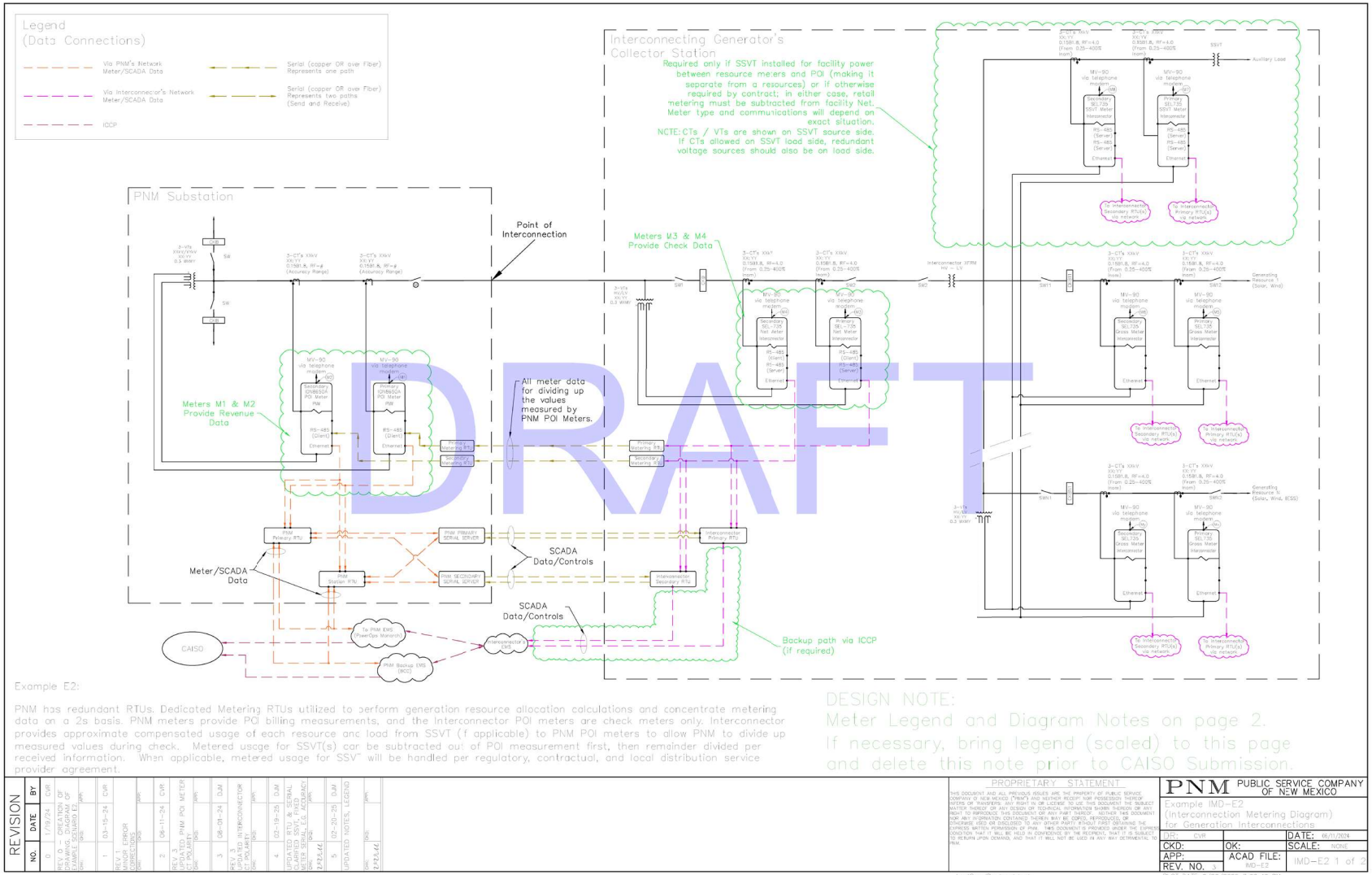
APPENDIX B: CO-LOCATED GENERATION FACILITIES EXHIBIT 1– SEE ADDENDUM FOR CLEARER IMAGE / ANY UPDATES



DRAFT

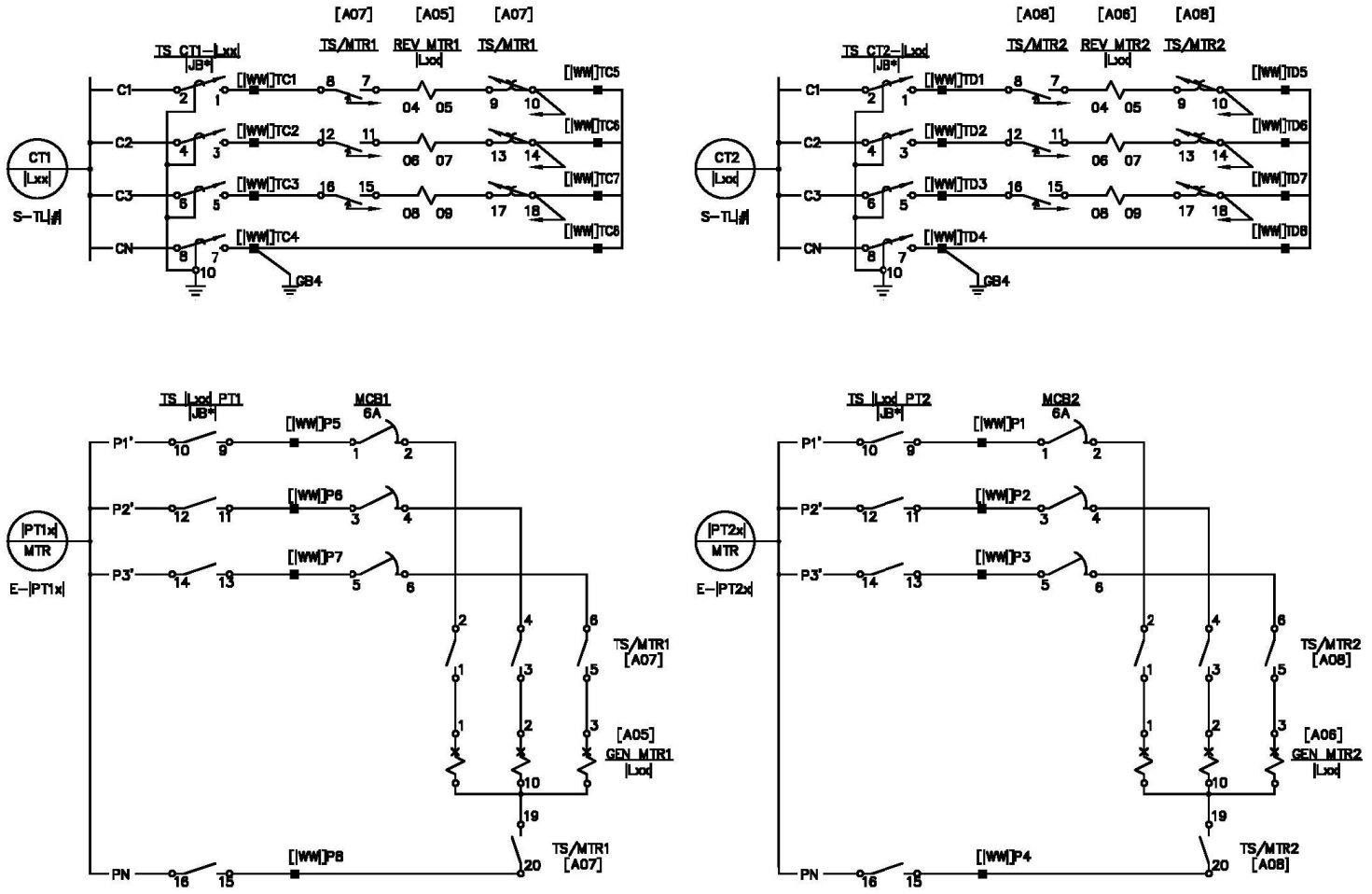
Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

APPENDIX C: CO-LOCATED GENERATION FACILITIES EXHIBIT 2– SEE ADDENDUM FOR CLEARER IMAGE / ANY UPDATES



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

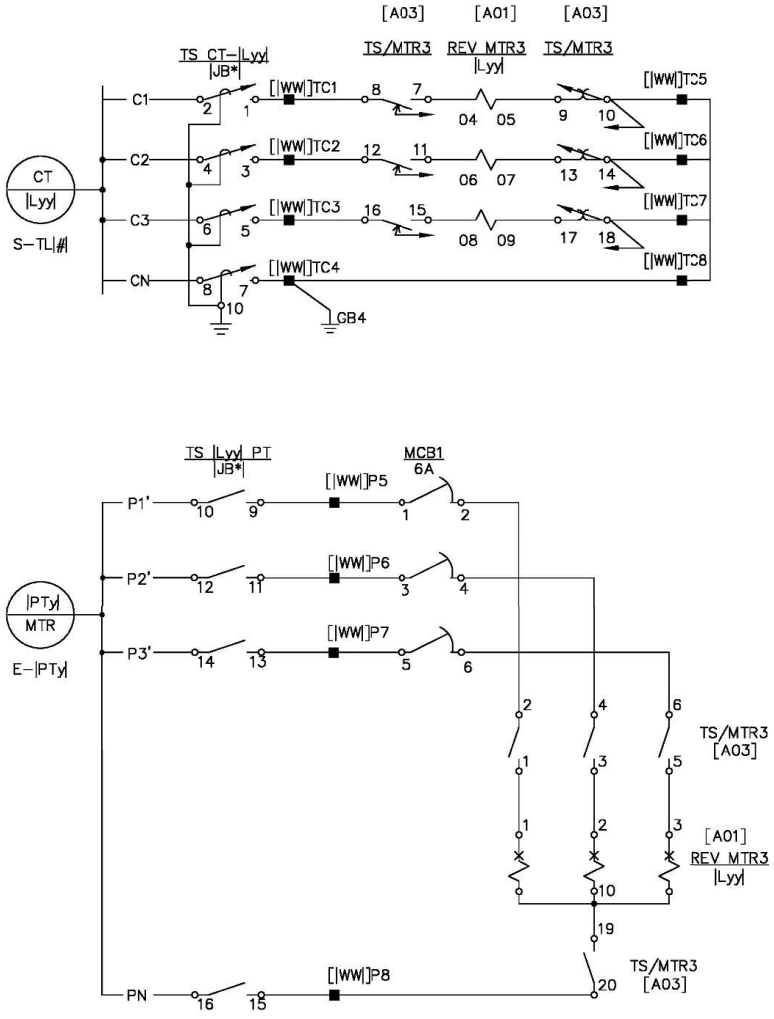
APPENDIX D: METERING VT AND CT SCHEMATIC FOR GEN-TIE/INTER-TIE



GEN–TIE/INTER–TIE PRIMARY AND BACKUP METERS

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

APPENDIX E: VT AND CT CONNECTIONS TO METER FOR LOAD



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

RECORD OF REVISIONS

Revision No.	Date	By	Description	Approved By
DRAFT-0	4/11/2022	RDP	Created Draft	RDP
DRAFT-1	7/5/2022	CVR	Created Document Outline and initial draft of body text	RDP
DRAFT-2	8/11/2022	RDP, CVR	First round of review and editing of body text content	RDP
DRAFT-3	10/10/2022	CVR	Second round of review and editing of body text content	
DRAFT-4	2/27/2023	CVR	Updated diagrams in Appendix A & B	
DRAFT-5	4/5/2023	CVR	EIM and PowerOps Review comments incorporated	
DRAFT-6	6/16/2023	CVR, DM	Updated Appendix A Example Metering One-Line	
DRAFT-7	11/9/2023	CVR, DM	Added paragraph regarding retail load to section 3.0	
FINAL-8	03/15/2024	CVR, DM	Multiple revisions to specifically address special metering needs of Co-Located Facilities: Data flow, Resources. Also clarified / added wording multiple sections.	MS
DRAFT 8.1	03/12/2026	DM	Correct easily misunderstood or erroneous or obsolete statements and provide clarifications based on field experience.	

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT O
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 agreement and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in N of the agreement and complete all testing as defined in EXHIBIT F of the agreement.

Figure 1 is for reference purposes only.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the agreement.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.

CONTACT	Company	Group	Address	Project Role	Office Phone	Mobile Phone	E-MAIL
(name)	PNM	Generation Engineering	2401 Aztec Rd NE Albuquerque, NM 87107	Contract Manager	505-241-XXXX	505-241-XXXX	…@pnm.com

The POC List shall identify, but not be limited to, the following:

Buyer Team: Buyer's contract manager identified in 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 modeling for functionality required for the participating resource schedule coordination (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.
- "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- **"Project Manager" –** Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.
- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the generation systems. The OEM shall define and execute all OEM-required equipment and system testing.
- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

- "**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 Authority (BA)
    - 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:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

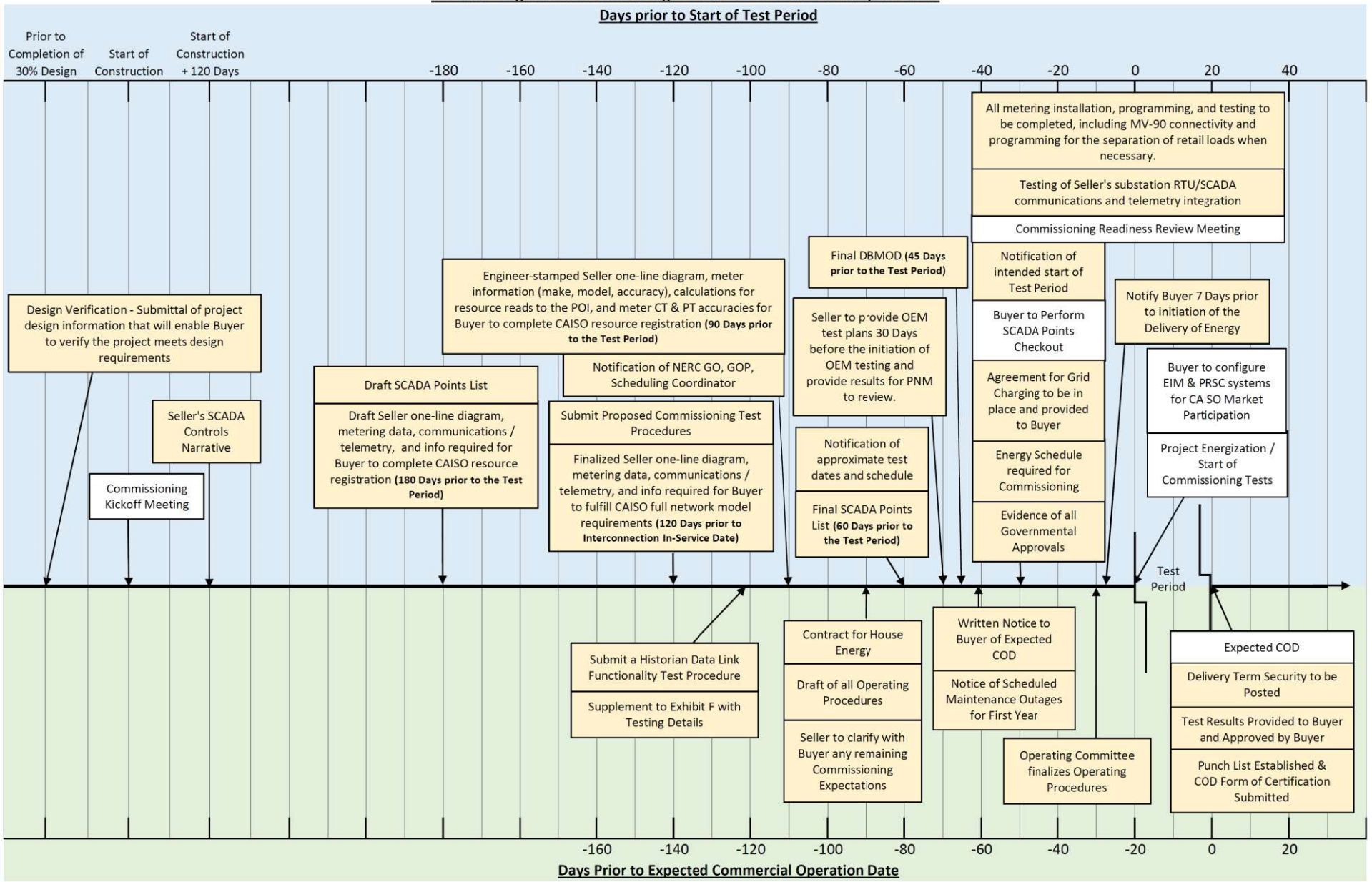
TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving agreement obligations, including grid forming inverters, metering, etc.	**Seller**	Generation Engineering	After completion of IFC design phase of project
Seller's SCADA Controls Narrative	Controls narrative detailing items related to SCADA and telemetry planning.	**Seller**	PowerOps	120 Days after Start of Construction
	Final DB Mod file delivered to PowerOps.	**Seller**	PowerOps	10 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled generation resource performance testing.	**Seller**	Buyer's Project Manager	Prior to the scheduled performance testing
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	Prior to the scheduled performance testing
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to 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 Electric Interconnection Point, 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. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Power Operations & WPM Systems configuration	EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent generation resources for CAISO market participation.	**PowerOps & WPM IT Support**	Seller	Prior to the beginning of the scheduled Test Period
Operating Procedure	Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering.	**Seller**	PowerOps	90 Days prior to the Commercial Operation Date
	An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system.	**Seller/Buyer**	Seller / PowerOps / Generation Engineering	30 Days prior to the Commercial Operation Date
OEM Test Plan	The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide 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 Tests of the associated PPA shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans.	**Seller**	Generation Engineering	Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period.
Commissioning Readiness Review Meeting	Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

- 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 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 agreement) 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 Testing.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Section 3.4 Final Requirements Prior to COD.

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

- Generation resource total gross values and total net values (in both MW and MVAr)
    - Gross and net values shall be provided for each resource registered with CAISO

- Point of Delivery values – MW, MVAr
- AGC setpoints for generation resource and voltage setpoint. As well as the feedback for those setpoints.
- Total real power target

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. DERMS Workbook inputs:

a. Seller shall provide required information for the DERMS, including:

- SCADA keys, resource characteristics, meteorology, etc.
- Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in EXHIBIT F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 the test evaluation results might 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 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.

Wildcat Solar Power Plant LLC Energy Storage Agreement

PNM Exhibit GBB-7

Is contained in the following 152 pages.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ENERGY STORAGE AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

WILDCAT SOLAR POWER PLANT LLC

Dated as of April 30, 2026

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ENERGY STORAGE AGREEMENT 1
ARTICLE 1 Definitions and Rules of Interpretation 1
1.1 Definitions 1
1.2 Rules of Construction. 19
1.3 Interpretation with Interconnection Agreement. 20
1.4 Interpretation of Arrangements for Electric Supply to the Project. 21
ARTICLE 2 Term and Termination 21
2.1 Execution Date and Term. 21
ARTICLE 3 Project Description 22
3.1 Commercial Terms. 22
3.2 Project. 22
3.3 Location. 22
3.4 General Design of the Project. 23
3.5 Expected Commercial Operation Date. 24
3.6 Extension of Expected Commercial Operation Date. 24
3.7 Delay Damages. 25
3.8 ESS Capacity Shortfall Damages. 25
3.9 Test Period. 25
3.10 Notice of Commercial Operation. 26
3.11 Charging. 26
3.12 ESS Unit Capabilities. 26
3.13 ESS Non-Performance Liquidated Damages. 27
3.14 Guaranteed ESS Roundtrip Efficiency Payment. 27
3.15 Prohibition Against Acquisition, Importation, Transfer, or Installation. 27
3.16 Eligible Change in Tariff. 28
ARTICLE 4 AGC; ESS Curtailment 28
4.1 AGC. 28
4.2 ESS Curtailment. 28
ARTICLE 5 Delivery and Metering 28
5.1 Delivery Arrangements. 29
5.2 Availability Reporting. 29
5.3 Electric Metering Devices. 29
5.4 Adjustment for Inaccurate Meters. 31
ARTICLE 6 Conditions Precedent 31

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

6.1 Conditions Precedent. 31
6.2 Notice. 32
ARTICLE 7 Sale and Purchase of Product 32
7.1 Sale and Purchase of Product. 32
7.2 Title and Risk of Loss. 32
7.3 Future Environmental Attributes. 32
7.4 Scheduling. 33
7.5 Forced Outages. 33
ARTICLE 8 Payment Calculations 33
8.1 Billing Components. 34
8.2 Payment Support Requirement. 34
8.3 Survival on Termination. 34
ARTICLE 9 Billing and Payment Procedures 35
9.1 Statements and Payment of Electricity Payments. 35
9.2 Miscellaneous Payments. 35
9.3 Currency and Method of Payment. 35
9.4 Default Interest. 35
9.5 Disputed Items. 36
9.6 Statement Errors. 36
9.7 Taxes. 36
9.8 Setoff and Payment Adjustments. 37
9.9 Netting. 37
9.10 Survival on Termination. 37
ARTICLE 10 Operations and Maintenance 38
10.1 Construction of the Project. 38
10.2 Commissioning and Testing. 39
10.3 Access to and Inspection of the Project. 39
10.4 Operating Parameters. 40
10.5 Operating Procedures. 40
10.6 Project Maintenance. 42
10.7 Sales to Third Parties. 43
10.8 Monthly Operational Report. 43
10.9 [Reserved]. 43
ARTICLE 11 Future Environmental Attributes 43

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

11.1 Sale of Future Environmental Attributes. 43
ARTICLE 12 Default and Remedies 44
12.1 Events of Default of Seller. 44
12.2 Events of Default of Buyer. 46
12.3 Damages Prior to Termination. 47
12.4 Termination. 47
12.5 Specific Performance. 48
12.6 Remedies Cumulative. 48
12.7 Waiver and Exclusion of Other Damages. 49
12.8 Payment of Amounts Due to Buyer. 49
12.9 Duty to Mitigate. 49
12.10 Security Rights. 49
ARTICLE 13 Contract Administration and Notices 49
13.1 Notices in Writing. 49
13.2 Representative for Notices. 50
13.3 Authority of Representatives. 50
13.4 Records. 50
13.5 Provision of Real-Time Data. 51
13.6 Examination of Records. 51
13.7 Exhibits. 52
13.8 Resolution of Issues. 52
ARTICLE 14 Force Majeure 52
14.1 Definition. 52
14.2 Notification Obligations 54
14.3 Duty to Mitigate. 54
14.4 Force Majeure Event Occurring After Commercial Operation. 54
ARTICLE 15 Representations, Warranties and Covenants 55
15.1 Seller's Representations, Warranties and Covenants. 55
15.2 Buyer's Representations, Warranties and Covenants. 57
ARTICLE 16 Insurance 57
16.1 Evidence of Insurance. 58
16.2 Term and Modification of Insurance. 58
16.3 Endorsements and Other Requirements. 58
ARTICLE 17 Legal and Regulatory Compliance and Governmental Approval 59

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

17.1 Applicable Laws. 59
17.2 Governmental Approvals. 59
17.3 NMPRC Approval. 59
17.4 Compliance with Reliability Standards. 60
17.5 Compliance Information. 60
ARTICLE 18 Assignment and Other Transfer Restrictions 61
18.1 No Assignment Without Consent. 61
18.2 Conditions on Transfers. 61
18.3 Change of Control. 61
18.4 Transfer Without Consent Is Null and Void. 62
18.5 Subcontracting. 62
18.6 Assignment to Lenders. 62
ARTICLE 19 Credit and Security Requirements 63
19.1 Security. 63
19.2 Form of Security. 63
19.3 Grant of Security Interest. 64
19.4 Use of Security. 64
ARTICLE 20 Indemnity; Insurance Proceeds 64
20.1 Indemnification. 64
20.2 Notice of Claims; Procedure. 65
20.3 Insurance Proceeds. 66
ARTICLE 21 Governmental Charges 66
21.1 Allocation of Governmental Charges. 66
ARTICLE 22 Miscellaneous 66
22.1 Waiver. 66
22.2 Fines and Penalties. 66
22.3 Standard of Review 67
22.4 Disclaimer of Certain Third Party Beneficiary Rights. 67
22.5 Relationship of the Parties. 67
22.6 Equal Employment Opportunity Compliance Certification. 67
22.7 Survival of Obligations. 68
22.8 Severability. 68
22.9 Complete Agreement; Amendments. 68
22.10 Binding Effect. 68

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

22.11 Headings. 68
22.12 Counterparts. 68
22.13 Governing Law. 68
22.14 Confidentiality. 69
22.15 Marketing Rights; Press Releases and Media Contact; Access. 71
22.16 Right to Mortgage. 71
22.17 Forward Contract and Master Netting Agreement. 72
22.18 Accounting Matters. 72
22.19 Telephone Recording. 73
22.20 Market Event 74

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBITS

Exhibit A	Description of Seller's Energy Storage Facilities, Site Map, and Project Schedule
Exhibit B	One-Line, Communications and Telemetry Diagrams of Project and Interconnection Facilities
Exhibit C	Description of Site Parcel Survey
Exhibit D	Notice Addresses
Exhibit E	Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
Exhibit F	Commissioning and Annual Testing
Exhibit G	Insurance Coverages
Exhibit H	Roundtrip Efficiency Guarantee
Exhibit I	Availability Calculations
Exhibit J	Form of Seller Guaranty
Exhibit K	Commercial Operation Form of Certification
Exhibit L	ESS Operating Restrictions
Exhibit M	ESS Functional Mapping
Exhibit N	Interconnection Metering Standard
Exhibit O	Preparation for Commissioning

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (this "**ESA**"), as may be amended from time to time, is entered into this 30th Day of April, 2026 ("**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 Wildcat Solar Power Plant LLC, a New Mexico limited liability company ("**Seller**"), whose principal place of business is 1 Riverway Suite 1700, Houston, Texas 77056. 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 agreement.

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

"**Actual Charge Ramp Rate**" means the maximum rate that the ESS can change its input power, as determined pursuant to Exhibit F.

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Actual Discharge Ramp Rate**" means the maximum rate that the ESS can change its output power, as determined pursuant to Exhibit F.

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

"**Actual System Latency**" means the time measured between when the control signal is received by the ESS and when the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as determined pursuant to 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 agreement 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 accepts communications from the System Control Center and 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, Black Start Capability, 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

"**Black Start Capability**" means that the ESS inverters shall be provided with the ability to form an islanded grid inside the Project while disconnected from the Point of Delivery if Buyer instructs Seller to reserve stored energy for this function. The ESS will not be designed to provide grid forming capability below a zero percent (0%) ESS State of Charge. Buyer may enhance the Black Start Capability after the Execution Date if (a) Buyer provides specifications for an enhanced Black Start Capability, (b) the specifications are within the capabilities of Seller's ESS integrated equipment and controls system supplier, and (c) Buyer pays all costs associated with upgrading the ESS to the enhanced Black Start Capability specifications as verified by an independent engineer. Upon the satisfaction of all of (a), (b) and (c) in the preceding sentence, Seller shall upgrade the ESS to the enhanced Black Start Capability specifications within eighteen (18) months.

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

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

"**Buyer Costs**" means 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 agreement or entering into new arrangements which replace this agreement; and all reasonable attorneys' fees and expenses incurred by Buyer in connection with the termination of this agreement, to the extent such costs are not already included in Replacement ESS Costs.

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

"**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

"**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 direct or indirect 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 the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the Commissioning Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this agreement; 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 K, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

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

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

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

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

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

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

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

"**Contract Value**" means the sum of the present values of the ESS Energy Payments expected to be made in each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination) which is to be determined in accordance with the calculation in Section 8.1(A). All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Creditworthy**" or "**Creditworthiness**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa3" or higher by Moody's, (b) "BBB-" or higher by S&P, and (c) "BBB-" or higher by Fitch.

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

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

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

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

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

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

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

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

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

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

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

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

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

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

"**Downgrade Event**" is when a Person fails to maintain Creditworthiness.

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

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

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

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. 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, in each case at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Point of Delivery, 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, in compliance with the ESS Unit Capabilities, and subject to the terms and conditions of this agreement.

"**Energy Storage System**" or "**ESS**" means the battery arrays, battery system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's charging, discharging, delivery or storage of electricity from renewable energy resources in contrast with the storage 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

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

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Curtailment**" has the meaning set forth in Section 4.2.

"**ESS Energy Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Energy Payment Rate**" means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

"**ESS Meter Energy In**" has the meaning set forth in Exhibit F.

"**ESS Meter Energy Out**" has the meaning set forth in Exhibit F.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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(A).

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the 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.

"**Fitch**" means Fitch Ratings Inc and any successor thereto.

"**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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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 agreement or the procurement pursuant to this agreement 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 contemplated by this agreement, 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**" means discharge of the ESS at Guaranteed PMAX for four (4) consecutive hours.

"**Guaranteed ESS Roundtrip Efficiency**" means, with respect to a Commercial Operation Year, the applicable percentage set forth in Exhibit H.

"**Guaranteed Frequency Response Capability**" 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**" has the meaning set forth 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 as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

water, groundwater, and air, including but not limited to any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

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

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

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

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

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

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

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

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

"**Licensed Professional Engineer**" means an independent, professional engineer that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(4) Clean Energy Associates, or (5) Leidos Engineering, LLC; and (B) reasonably acceptable to Buyer (provided that at least one of the foregoing (A)(1)-(5) shall be reasonably acceptable to Buyer), licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

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

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

"**Market Event**" has the meaning set forth in Section 22.20.

"**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**" or "**Monthly**" means a calendar month.

"**Monthly Billing Period**" means each Month during the Term 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" means the maximum amount of electrical energy, expressed in megawatt-hours (MWh), that the Energy Storage System is designed to store and make available for discharge, net of auxiliary and parasitic loads, based on the manufacturer's rated specifications and measured at the applicable metering point.

"**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).

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

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

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

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

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

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

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

"**PCS**" or "**Power Conditioning System**" means the Energy Storage System power conditioning system utilized to convert electric power from one form to another (AC to DC, DC to AC, and/or between different voltage levels), and to condition the power quality to what is needed by the interconnected systems.

"**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 ExhibitO.

"**Point of Delivery**" means the electric system point at which (i) Buyer delivers Charging Energy to Seller, (ii) Seller delivers Discharge Energy to Buyer and (iii) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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 agreement.

"**Project**" means Seller's energy storage facility, located in McKinley County, New Mexico, with a designed maximum power charge and discharge capability of fifty (50) MW for four (4) hours (200 MWh), as identified and described in Article 3 and Exhibit A to this agreement, 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 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 agreement.

"**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(A).

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

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

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

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

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) Creditworthiness, and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project), or (b) is reasonably acceptable to Buyer.

"**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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Replacement ESS Costs**" means the costs to Buyer reasonable and necessary to replace the Product (including Future Environmental Attributes and Ancillary Services) as defined herein and based upon similar terms, conditions and performance standards outlined in this agreement which Seller, in accordance with this agreement, would have made available to Buyer but failed to so provide pursuant to this agreement. 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 (including Future Environmental Attributes and Ancillary Services) delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs 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 agreement.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**SCADA**" means the Project's remote supervisory control and data acquisition system, which includes all necessary components and contact points at the Project.

"**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 agreement, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"**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'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 agreement or in entering into new arrangements which replace this agreement; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this agreement.

"**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product as a result of: (a) a Force Majeure Event that affects the ability of Buyer to deliver Charging Energy or to receive Discharge Energy at the Point of Delivery, (b) any failure by Buyer to perform a material obligation under this agreement (other than due to a breach by Seller of its obligations under this agreement), (c) failure of Buyer to provide Charging Energy, (d) Emergency Condition, (e) Buyer's dispatch of the Project which is not in accordance with the Operating Parameters, (f) an ESS Curtailment or (g) the time that the Project is required to be offline or at limited capacity as a result of (i) annual required testing in accordance with this agreement or (ii) additional testing requested by Buyer in accordance with this agreement.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Product that would otherwise be made available from the Project at the Point of Delivery not associated with Seller Excused Hours.

"**Seller Guarantor**" means a Person that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit J.

"**Seller Permitted Transfer**" means any of the following: (a) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Ultimate Parent retains the ability to control the management and policies of Seller; (b) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction or (iii) a direct or indirect transfer to a Person of 50% or more of the shares of, or equity interests in, Seller; *provided*, that in the case of (b), (A) the transferee is a Qualified Transferee, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to any Seller's Lender and any subsequent assignee, designee or transferee thereof; provided that in the case of (c), (A) the Seller's Lender or its applicable assignee, designee or transferee is a Qualified Transferee and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e.,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, 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.

"**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 agreement. This agreement is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval. Adding or subtracting contiguous parcels of property will not be deemed a relocation requiring Buyer consent.

"**State of Charge**" or "**SOC**" means the level of charge as reported by the ESS, expressed in percent of Nameplate Energy Capacity.

"**Supplemental State Tax Incentives**" means any 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 State Tax Incentives, and any other tax credits that are or will be generated by or attributable to the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority.

"**Term**" means the period during which this agreement 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 transmission function capacity, owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means Daiwa Securities Group Inc.

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

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

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 agreement unless otherwise stated.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this agreement; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this agreement, the terms of this agreement shall take precedence.

(D) This agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this agreement and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this agreement 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 agreement. Unless expressly provided otherwise in this agreement, (i) where the agreement requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the agreement 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) All uses of the word "shall" in this agreement are to be interpreted as imperative and not permissive.

(H) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this agreement as a whole.

(I) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(J) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or."

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this agreement are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this agreement, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this agreement. This agreement shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this agreement, the Transmission Provider shall be deemed to be a separate entity and separate contracting party

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This agreement does not provide for the supply of retail electric power to the Project for any purpose ("House Energy"). Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter the Charging Energy and Discharge Energy of the ESS in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this agreement are not binding upon the Local Provider. For purposes of this agreement, 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 agreement, 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 agreement. This agreement shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Energy and for House Energy, backfeed power and station service power or (ii) a single Electric Metering Device that separately measures Energy and House Energy, backfeed power and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This agreement shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Standard 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 agreement

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this agreement, as each term is more fully set forth in this agreement:

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	**Seller:** Wildcat Solar Power Plant LLC
Project: Wildcat Energy Storage Facility	
Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this agreement, as further specified in the definition of "Point of Delivery."	
Delivery Term: Twenty (20) years	**Product Type:** Bundled Energy Storage Services, Ancillary Services, Future Environmental Attributes, ESS Capacity, and other ESS Unit Capabilities
ESS Energy Payment Rate: $17.26/MWh, as further specified in Section 8.1(A).	
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: April 30, 2029	

3.2 Project. Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit A to this agreement. Exhibit A also contains a preliminary

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

indication of the location of the ESS at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS and Interconnection Facilities at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the terms of this agreement and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Section 3.4(A) through Section 3.4(H), and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, 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 Interconnection Metering Standard from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply 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 immediate disconnection remotely by the System Control Center;

The Project shall meet or exceed the recommended performance specifications of this Section 3.4(I) through Section 3.4(K), and as appropriately defined in IEEE Standard 2800-2022 Section 5, Section 6 and Section 7 at the Point of Delivery at all times;

(I) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Section 5 at the Point of Delivery;

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(J) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Section 7 at the Point of Delivery, which shall be Category II minimum;

(K) 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

(L) 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 Section 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this agreement, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis (a) up to a maximum of one hundred fifty (150) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event (together with a reasonable period for the affected Party to cure the Force Majeure Event as contemplated in Section 14.2) that delays construction or commencement of operation of the Project, (b) 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, or (c) other than in connection with or arising out of or relating to any Force Majeure Events or the interconnection of the Project, (i) if Seller

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

notifies Buyer that Seller requires a performance from Buyer of Buyer's obligations under Exhibit F or Exhibit O, and (ii) Buyer does not timely perform such obligations, then on a day-for-day basis without an aggregate cap for the time period for the days of delay beyond Buyer's failure to perform in a timely manner to the extent such failure by Buyer to perform 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 the Expected Commercial Operation Date is extended pursuant to clause (a) or (b) of this Section for the maximum extension period set forth in the applicable clause, then Buyer will have the right to terminate this agreement without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed ESS Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed ESS Capacity**" is an amount equal to the difference between the Guaranteed ESS Capacity and the ESS Capacity as of the determination date. The Delay Damages and, if applicable, Buyer Termination Payment subject to the limitations set forth in Section 12.3(B), are the Buyer's sole and exclusive monetary remedies, and Seller's sole and exclusive monetary liabilities, for Buyer's damages due to any delays in achieving, or failure to achieve, the Expected Commercial Operation Date.

3.8 ESS Capacity Shortfall Damages. 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**"), as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed ESS Capacity, in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8 and the ESS Energy Payment shall be reduced by an amount proportional to the Delayed ESS Capacity.

3.9 Test Period. Seller shall, no later than ninety (90) Days prior to the beginning of the Test Period, give written notice to Buyer of its NERC-registered Generator Owner and Generator Operator and designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M. 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 Discharge 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 sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit K 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, and all the requirements of Commercial Operation have been met, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) Business Days after the date set forth in the Commercial Operation Notice. If 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) Capability to discharge at fifty (50) MW (the "**Guaranteed PMAX**") for four (4) uninterrupted hours, as may be adjusted pursuant to Section 3.8;

(B) [Reserved];

(C) ESS Roundtrip Efficiency equal to the Guaranteed ESS Roundtrip

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Efficiency;

(D) Actual Discharge Ramp Rate equal to the Guaranteed PMAX per second measured between 85% State of Charge and 15% State of Charge (the "**Guaranteed Discharge Ramp Rate**");

(E) Actual Charge Ramp Rate equal to the Guaranteed PMAX per second measured between 15% State of Charge to 85% State of Charge (the "**Guaranteed Charge Ramp Rate**");

(F) **Guaranteed System Latency**: <1 second;

(G) **Guaranteed Frequency Response Capability**: Guaranteed PMAX/0.1Hz; and

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5. 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) Seller Excused Hours) or to comply with the requirements of Section 7.4(A).

(A) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, Guaranteed Frequency Response Capability, or Guaranteed System Latency during ESS Unit Capabilities testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to Ten Thousand Dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. Provided, however, under no circumstances will ESS Non-Performance Liquidated Damages (other than ESS Capacity Shortfall Damages) exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year. As used in this Section 3.13(A), "event" means an occurrence causing a failure to comply by Seller lasting no more than seventy-two (72) hours; each exceedance of the seventy-two (72) hour cap by the same occurrence will be deemed a separate event. If multiple failures occur within 72-hours of the initial event, they will be treated as a single event if arising out of a common root cause.

3.14 Guaranteed ESS Roundtrip Efficiency Payment.

(A) 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)).

3.15 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this agreement is not

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

prohibited by Applicable Law. Any breach of this Section 3.15 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 3.15 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.16 Eligible Change in Tariff. To the extent an Eligible Change in Tariff occurs between the Execution Date and one (1) year after NMPRC Approval that requires Seller to take additional actions to comply with Seller's obligations under this agreement and the costs associated with such actions, if they had been reasonably contemplated as of the Execution Date, increase Seller's costs by more than one and a half percent (1.5%) of the Contract Value at contract execution, 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; ESS Curtailment

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.

4.2 ESS Curtailment. An ESS Curtailment occurs any time the Project is unable to receive otherwise available Charging Energy or deliver otherwise available Discharge Energy to Buyer as a result of transmission limitations regardless of whether such curtailment is affected directly by Seller or Buyer, including as a result of Buyer's scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements ("**ESS Curtailment**").

ARTICLE 5
Delivery and Metering

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this agreement 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 agreement. 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 from the Project to Buyer at the Point of Delivery at the required voltage and frequency, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on the Project and any co-located generation systems sharing the same interconnection. If applicable, delivery of Energy from the co-located generation systems to the Transmission Provider's Transmission System shall take priority over Energy discharged from the ESS; and further provided, that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Energy discharged from the ESS shall take priority over delivery of Energy from co-located generation systems.

(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 as necessary under participation in any regional market, including the EIM or the EDAM, if any.

(E) Seller shall be responsible for separately sourcing, metering and payment for an electrical power supply and associated power consumption for the Project House Energy.

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 agreement shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Electric Metering Devices, including Primary Metering Devices and redundant metering ("**Back-Up Metering**") with independent current transformers ("**CTs**") and potential transformers ("**PTs**"), are installed at or near the Electric Interconnection Point that measures the Charging Energy and Discharge Energy of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement 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 made available to Buyer by Seller under this agreement 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 agreement. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. 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 power and Energy, if supplied by either the co-located generation system or ESS system. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided* that the Parties may revise this loss adjustment based on actual experience. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, secondary, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A) and the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices or Secondary Metering are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device or Secondary Metering fails to register, or if the measurement made by an Electric Metering Device or Secondary Metering is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall first use Back-Up Metering, followed by Secondary Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that such Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If 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 agreement are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(B) [Reserved].

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; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this agreement.

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 agreement, 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 Buyer shall not be required to receive and purchase Product when and to the extent that (a) a Seller Forced Outage or a Scheduled Maintenance Outage is continuing, or (b) Seller's performance is excused during Seller Excused Hours or due to Force Majeure Event. At its sole discretion, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will 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 agreement.

7.2 Title and Risk of Loss. As between Seller and Buyer, Buyer shall be deemed to be in control of all Charging Energy up to delivery at the Point of Delivery, Seller shall be deemed to be in control of all Charging Energy from and after such delivery to the Point of Delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy at the Point of Delivery, and Buyer shall be deemed to be in control of all Discharge Energy from and after delivery and receipt at the Point of Delivery. Buyer shall at all times retain title and risk of loss for Charging Energy, Charging Energy that is stored in the ESS, and Discharge Energy. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this agreement all right and title to such Future Environmental Attributes is included in the ESS Energy Payment Rate and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this agreement. 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 agreement 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 agreement 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; provided, that Seller shall not be required to incur any costs for Buyer to receive the benefit of Future Environmental Attributes unless requested to do so 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. Buyer shall 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 policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) [Reserved]

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) If, at any time following submission of a good faith estimate as described in Section 7.4(C) 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.

(E) Seller shall configure the ramp rate for the Project such that Discharge Energy will not increase at a rate greater than twenty (20) MW per minute.

7.5 Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

ARTICLE 8
Payment Calculations

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for test energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Energy Payment. Subject to the provisions of this agreement, Buyer shall pay Seller an amount equal to the product of (i) the ESS Capacity, not to exceed the Guaranteed ESS Capacity, multiplied by (ii) the Monthly Hours, multiplied by (iii) the ESS Energy Payment Rate, multiplied by (iv) Monthly ESS Availability, as determined in accordance with Exhibit I (the "**ESS Energy Payment**"). The ESS Energy Payment also compensates Seller for the associated Environmental Attributes and Ancillary Services, in any Monthly Billing Period. The ESS Energy Payment includes all Taxes.

Example: For a 30-Day Month, assuming 98% availability

ESS Energy Payment =

100 MW ×30 Days ×24 hours × $17.26/MWh ×0.98

(B) If Supplemental State 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 agreement. 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 agreement which are reasonably required to allow the Parties to receive the Supplemental State Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

(C) In the event that Seller, Affiliate of Seller or Tax Equity Investor becomes eligible to receive and receives any Supplemental State Tax Incentives with respect to the Project, the value of such Supplemental State Tax Incentives will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental State 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 value of such Supplemental State 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 agreement consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this agreement for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental State Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the 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 agreement (in Dollars) to Seller for the preceding Month. Each such invoice shall show the ESS Energy Payment, information and calculations, in reasonable detail.

(D) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(F) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this agreement, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this agreement shall be made in Dollars in immediately available cleared funds by wire transfer or electronic funds transfer into the relevant account specified in this agreement 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 agreement 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 lower of (i) the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) and (ii) the maximum interest rate allowed by Applicable Law ("**Default Rate**"), as

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. A Party must notify the other Party of any error within three hundred sixty-five (365) Days of such error.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, 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 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 agreement 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 agreement.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, value 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,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement and implement the provisions in this agreement in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this agreement 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 agreement, including Section 9.9 below, all payments between the Parties under this agreement 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 agreement, including damages and other payments that are owed by a Party to the other Party pursuant to this agreement. Undisputed and non-offset portions of amounts invoiced under this agreement 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 agreement, 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 agreement.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, Applicable Law and this agreement. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer Monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key Project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent Monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-13-16 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 Day 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 62-13-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not modify, alter, or otherwise change the Project without the

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, annual performance, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this agreement and any documents ancillary hereto, neither this agreement 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 provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and ten (10) Days prior notice of the final tests scheduled relating to the commissioning of the Project Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this agreement, 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 agreement, 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 agreement, 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 all requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this agreement. 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, Section 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 standards and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than thirty (30) Days before the Commercial

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "Operating Procedures"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of Day-to-Day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this agreement, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

(A) Seller will prepare detailed test protocols and procedures for any tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this agreement. The protocols and procedures will be developed by Seller in accordance with the requirements of the agreement 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 withheld unreasonably.

(B) Not later than one hundred eighty (180) Days before the Commercial Operation Date, Seller and Buyer shall develop mutually agreeable written test protocols, based upon the methodologies identified in Exhibit F to quantify the ESS Unit Capabilities. Seller will perform annual ESS Unit Capabilities tests in accordance with those test protocols and procedures and promptly provide the results to Buyer. With the exception of the cost for Charging Energy provided by Buyer, the annual ESS Unit Capabilities tests will be performed at Seller's expense. Annual testing for ESS Capacity and Guaranteed ESS Roundtrip Efficiency shall consist of two annual tests. Each of Buyer and Seller may elect up to two additional tests to be performed at a mutually agreed time. Within thirty (30) Days of the completion of an ESS Capacity or ESS Roundtrip Efficiency test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the basis of compliance with the applicable guarantee and the basis of applicable liquidated damages in Section 3.13, adjustment to the ESS Roundtrip Efficiency payment as outlined in Section 3.14, or adjustment to the ESS Energy Payment as outlined in Section 8.1(A).

(C) Testing for all remaining ESS Unit Capabilities, including Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, Guaranteed System Latency, Guaranteed

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Frequency Response Capability, and capability to support Ancillary Services (collectively, "Buyer-Requested Performance Tests") shall be performed once per Commercial Operation Year. Upon failure to pass any of these ESS Unit Capabilities tests, Seller will have ninety (90) Days from the test date to cure any deficiencies in the test.

(D) For all ESS Unit Capabilities tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the test and Buyer shall have the option to inspect the Project during such test.

(E) For all ESS Unit Capabilities tests and re-tests, Seller shall provide a test report including all performance data, model simulations, calculations, and test reports to the Buyer for analysis and approval.

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 agreement. 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 October 15 for the period of June 1 through November 30 for the following Commercial Operation Year and by no later than April 15 for the subsequent period of December 1 through May 31. Should Buyer desire to change the reporting dates noted above as a result of Buyer's participation in a regional market or program (including the Western Resource Adequacy Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the April 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 will be subject to approval by Buyer, not to be unreasonably withheld. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th, December, or January without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, 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. Prior notice and Buyer approval shall not be required if such project maintenance is required for safety, Emergency Conditions, or compliance with Applicable Law and cannot be delayed until the next Scheduled Maintenance Outage.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the fifteenth (15th) Day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**"). 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; meteorological data; 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. If any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 [Reserved].

ARTICLE 11
Future Environmental Attributes

11.1 Sale of Future Environmental Attributes.

If Future Environmental Attributes become available, this Article 11 shall apply.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to 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 creation. The value of the Future Environmental Attributes transferred under this agreement shall be included in the ESS Energy Payment Rate.

(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 agreement, but not used, sold, assigned or otherwise transferred during the Term of this agreement. Buyer may, to the extent permitted by Applicable Law and this agreement, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement or any successor provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(E) Seller shall register the Project, as necessary, no later than thirty (30) Days after Buyer notifies Seller of the availability of such Future Environmental Attributes, 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. Notwithstanding the foregoing, Seller shall not be required to expend more than Five Thousand Dollars ($5,000) per MW annually and Ten Thousand Dollars ($10,000) per MW in the aggregate to maintain compliance due to regulatory changes relating to Future Environmental Attributes.

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this agreement (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 voluntarily taking advantage of any such law by answer or otherwise;

(4) Except during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this agreement or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this agreement, or other date mutually agreed to by the Parties in writing;

(7) Seller's assignment of this agreement, 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The failure of Seller to make any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

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

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including the Interconnection Agreement) required to make Product available at the Point of Delivery;

(3) Seller's failure to make any payment due to Buyer under or in connection with this agreement (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 agreement);

(4) Seller's failure to comply with any other material obligation under this agreement, which would result in a material adverse impact on Buyer; or

(5) Should Future Environmental Attributes become available and Seller fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this agreement.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this agreement shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise; or

(4) Buyer's assignment of this agreement except as permitted in accordance with Article 18.

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this agreement) shall constitute an Event of Default upon the failure of Buyer to cure within thirty (30) Days of written notice from Seller to Buyer.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period; or

(2) Any representation or warranty made by Buyer in this agreement

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this agreement 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 agreement 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 agreement 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 and (y) the ESS Energy Payment Rate; *provided, however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer.* 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 pursuant to this agreement, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this agreement for the procurement of Product, which includes 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 Energy 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, but in no event less than Zero Dollars ($0.00). Seller shall use commercially reasonable efforts to avoid, minimize or mitigate Seller's damages.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this agreement 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 agreement, 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 agreement 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 agreement. Upon the termination of this agreement 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. 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.

(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.

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 agreement.

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 agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this agreement, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this agreement, 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 agreement.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this agreement, 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 agreement 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 agreement to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement. 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 agreement 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 agreement.

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 agreement, 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 agreement 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 agreement (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this agreement. 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 Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) monthly construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this agreement, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this agreement, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only, and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this agreement, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this agreement. 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 agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, Exhibit C, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this agreement 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 agreement, 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. If 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. If 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**" means an event or circumstance that arises, after the Execution Date, that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this agreement. 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,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws; (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 agreement beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of two hundred seventy (270) 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 agreement 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 agreement, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. If any delay or nonperformance results from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this agreement 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 its effects impact the ability of:

(A) Seller to deliver Discharge Energy from the Project or to accept Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment;

(B) Buyer to receive Discharge Energy from the Project or to deliver Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment; or

(C) both Buyer and Seller to perform the acts described in (A) and (B), then the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Mexico. 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 agreement.

(B) The execution, delivery, and performance of its obligations under this agreement 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 agreement;

(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 agreement; 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 agreement) 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 agreement.

(C) The obligations of Seller under this agreement are valid and binding obligations of Seller.

(D) The execution and performance of this agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Seller's execution, delivery and performance of this agreement have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

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

(L) All right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Future Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) [Reserved].

(P) [Reserved].

(Q) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(R) This ESA does not grant Buyer an option to purchase the Project or any portion of the associated assets at any time during or after the end of the Term.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

(B) The execution, delivery, and performance of its obligations under this agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this agreement;

(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 agreement; 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 agreement) 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 agreement.

(C) This agreement is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this agreement 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 agreement have been duly obtained and are in full force and effect.

ARTICLE 16
Insurance

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 within thirty (30) Days of the annual insurance policy renewal or update or change of the insurance policy, 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 agreement 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 agreement shall cover occurrences during the Term of this agreement on an "occurrence" basis. If 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 agreement, 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 respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this agreement 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 respective

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 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 agreement. 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 agreement 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 NMPRC Approval in connection with (i) the execution and performance of this agreement; and (ii) any waivers as set forth in Buyer's request for approval of this agreement (collectively, "**Requested Actions**"). An NMPRC order that defers action on cost recovery to a future case shall not be a material adverse financial order. In particular:

(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 with no material adverse financial determination, which final written order is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, *provided* that each of Seller and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(1) If the NMPRC disapproves any of the Requested Actions, then this agreement shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer will amend this agreement to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this agreement. If the Parties are unable to mutually agree on any amendments to this agreement to address such NMPRC Approval order, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval by 11:59 P.M. of December 31, 2026 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, 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 agreement by Seller to an Affiliate of Seller; (ii) a Seller Permitted Transfer; or (iii) any assignment or transfer of this agreement 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), (ii) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) 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 agreement.

(B) Seller's consent shall not be required for any assignment of this agreement by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, or consolidation of Buyer or its parent corporation, *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 such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this agreement as and if required by NMPRC regulations and will resell the Product hereunder.

18.2 Conditions on Transfers. If the rights and interests of a Party in this agreement 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 agreement 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 agreement with the Affiliate as if such Person had been named under this agreement; *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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement made without fulfilling the requirements of this agreement 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 agreement 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 and licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this agreement by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, (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 agreement; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this agreement 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 agreement 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 third-party 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 agreement.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this agreement 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 agreement; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this agreement and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

this agreement 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, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed ESS Capacity, (the "**Development Security**"), the first Fifty Thousand Dollars ($50,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Fifty Thousand Dollars ($50,000) per MW of which will be posted no later than eighteen (18) months prior to the Expected Commercial Operation Date. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed ESS Capacity (the "**Delivery Term Security**"). Seller 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 ESS Capacity Shortfall Damages and provided the Delivery Term Security. If no amounts are due and owing under this agreement and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) Day after termination of this agreement in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer:

(a) cash, (b) a Letter of Credit in form acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be 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 Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) Days before expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or ten (10) Business Days if the only event is that the credit rating of the issuer bank of a Letter of Credit has fallen below the Issuer Minimum Requirements) (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this agreement, 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 the Development Security or Delivery Term Security, as applicable to recover any amounts owing to it arising out of this agreement, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this agreement. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this agreement, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this agreement.

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 ("**Buyer's Indemnified Persons**"), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 ("**Seller's Indemnified Persons**"), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. If 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 to the applicable Governmental Authority 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 on the making available of Product arising 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 to the applicable Governmental Authority 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 agreement 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 agreement, 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 agreement, or any contractual obligation,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this agreement shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this agreement whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this agreement, 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 agreement 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 agreement.

22.5 Relationship of the Parties.

(A) This agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement 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 agreement, 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 agreement 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 agreement with a view toward effecting the purposes of this agreement 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 agreement constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this agreement, this agreement 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 agreement, 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 agreement are for ease of reference only and do not constitute a part of this agreement.

22.12 Counterparts. This agreement 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. The interpretation and performance of this agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

of any other law. All disputes arising out of or related to this agreement shall be brought in the United States District Court for the District of New Mexico; the Parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED**.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "Disclosing Party" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this agreement, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, 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 agreement. 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). To the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this agreement 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 agreement (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic), and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf), or which concerns this agreement, the Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this agreement. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this agreement:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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 Receiving Party's Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; 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 agreement, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this agreement, 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 agreement, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this agreement that relates solely to this agreement 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 agreement, 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, prior to disclosure, inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall immediately notify Buyer 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)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

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

(A) Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this agreement, 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 agreement (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this agreement or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

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 agreement, 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 agreement. 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions, and Buyer shall be responsible for Seller's reasonable third-party costs associated with assisting Buyer in such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this agreement constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code § 101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code § 101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this agreement (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 agreement, 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 Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

22.19 Telephone Recording. Each Party to this agreement 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 agreement. 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. If a dispute occurs between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Recording to the other Party upon request.

22.20 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this agreement, the Parties shall negotiate in good faith to amend this agreement to resolve such changes in order to effect performance of this agreement, at the least possible cost to the Parties, consistent with this agreement, including Section 7.4(A). To the extent that the Parties are unable to do so, either Party may initiate the process set forth in Section 13.8.

[Signature page(s) follow]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

IN WITNESS WHEREOF, the Parties have caused this agreement to be duly executed as of the date first above written. This agreement shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Laurie Williams B87ED845D25E4D9...

Name Laurie A Williams

Title Senior Vice President

WILDCAT SOLAR POWER PLANT LLC

By _____

Name Jun Hayakawa

Title President of DEI Green Investment Co., sole member of Wildcat Solar Holdings LLC

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT A
DESCRIPTION OF SELLER'S ENERGY STORAGE FACILITIES, SITE MAP, AND PROJECT SCHEDULE

1. Name of Seller's Project: Wildcat Energy Storage Facility

2. Location: Comprised of approximately 960 acres of public and private land in McKinley County, New Mexico, located along Defiance Draw Road, and approximately 8 miles northwest of the City of Gallup: Sections 25 and 36, Township 16 North, Range 20. The project coordinates are 35°35'03.4"N, 108°55'01.8"W.

3. Owner (if different from Seller): N/A

4. Operator: Daiwa Energy & Infrastructure Co, Ltd.

5. 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: Comprised of 65 840kW inverters, mounted typically with a 4.2MVA step-up transformer at 34.5kV.

   c. Total nameplate capacity (AC): 50 MW

   d. Total capacity at point of delivery: 90 MW

   e. Additional technology-specific information: N/A

   f. Battery chemistry: Lithium-Ion

6. Project Schedule:

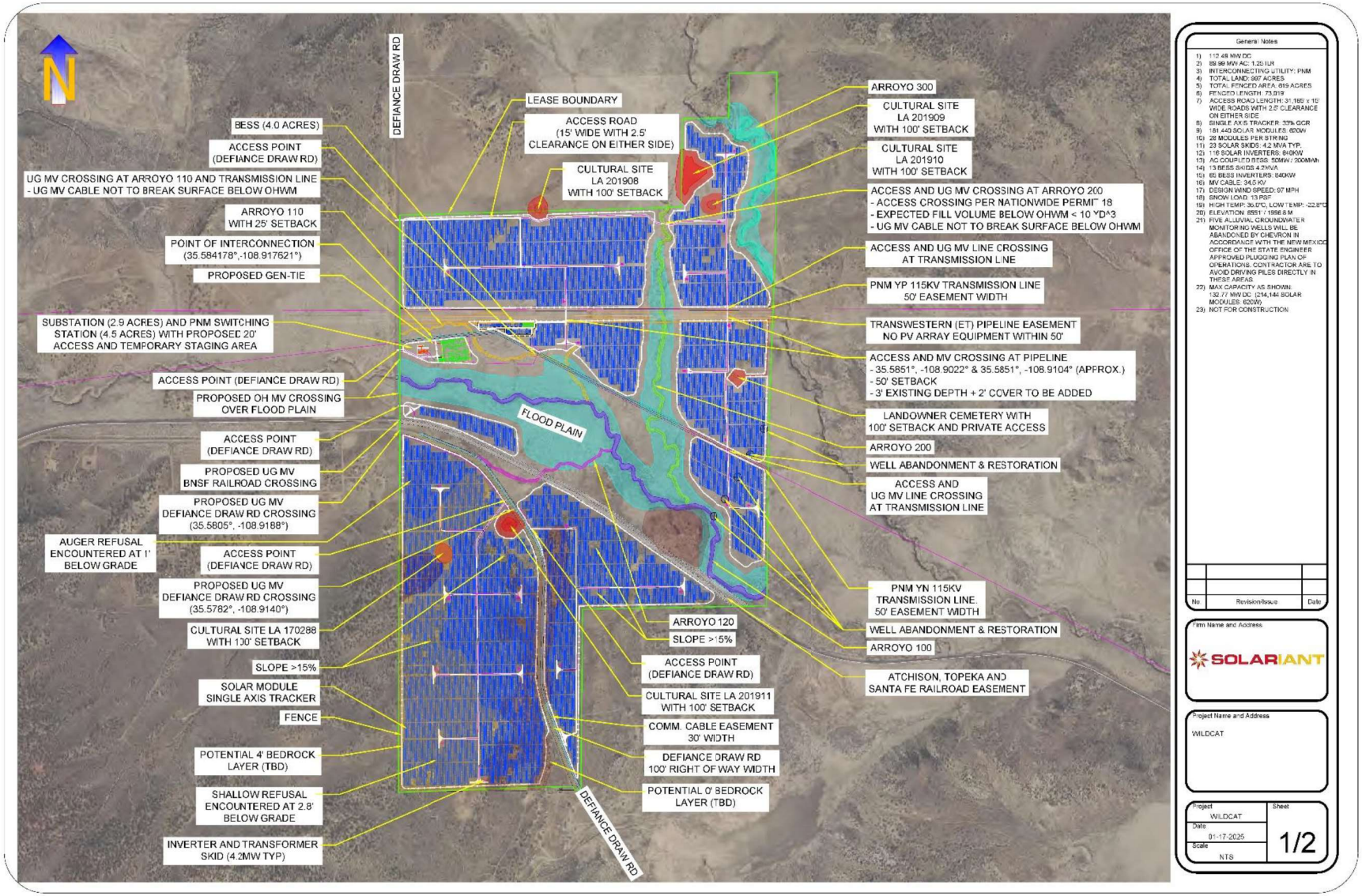
Key Milestone	Date
LGIA Execution	September 3, 2024
Major Equipment Supply Agreements Executed	March 31, 2027
Discretionary Permits	March 31, 2027
Close Financing	March 31, 2027
30% Design Complete	September 31, 2026
Start of Project Construction	June 30, 2027
First Major Equipment Delivered to Site	September 31, 2027

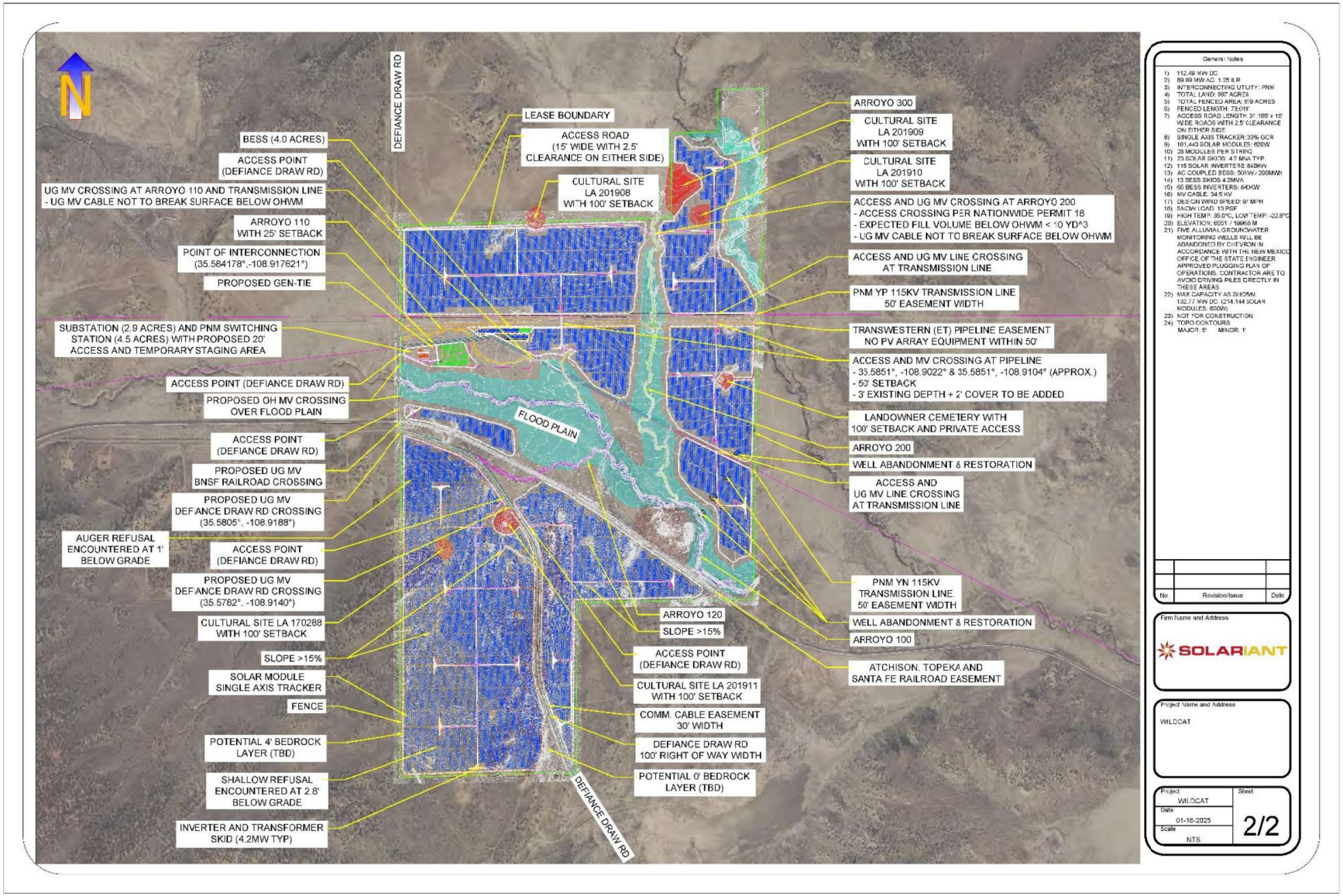
Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Interconnection In-Service Date	December 31, 2028
Commissioning Start Date	March 31, 2029
Expected Commercial Operation	April 30, 2029
Guaranteed Start Date	September 27, 2029

Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the agreement.

Site Map


N
DEFIANCE DRAW RD
LEASE BOUNDARY
ACCESS ROAD (15' WIDE WITH 2.5' CLEARANCE ON EITHER SIDE)
CULTURAL SITE LA 201908 WITH 100' SETBACK
BESS (4.0 ACRES)
ACCESS POINT (DEFIANCE DRAW RD)
UG MV CROSSING AT ARROYO 110 AND TRANSMISSION LINE - UG MV CABLE NOT TO BREAK SURFACE BELOW OHWM
ARROYO 110 WITH 25' SETBACK
POINT OF INTERCONNECTION (35.584178°,-108.917621°)
PROPOSED GEN-TIE
SUBSTATION (2.9 ACRES) AND PNM SWITCHING STATION (4.5 ACRES) WITH PROPOSED 20' ACCESS AND TEMPORARY STAGING AREA
ACCESS POINT (DEFIANCE DRAW RD)
PROPOSED OH MV CROSSING OVER FLOOD PLAIN
FLOOD PLAIN
ACCESS POINT (DEFIANCE DRAW RD)
PROPOSED UG MV BNSF RAILROAD CROSSING
PROPOSED UG MV DEFIANCE DRAW RD CROSSING (35.5805°, -108.9188°)
AUGER REFUSAL ENCOUNTERED AT 1' BELOW GRADE
ACCESS POINT (DEFIANCE DRAW RD)
PROPOSED UG MV DEFIANCE DRAW RD CROSSING (35.5782°, -108.9140°)
CULTURAL SITE LA 170288 WITH 100' SETBACK
SLOPE >15%
SOLAR MODULE SINGLE AXIS TRACKER
FENCE
POTENTIAL 4' BEDROCK LAYER (TBD)
SHALLOW REFUSAL ENCOUNTERED AT 2.8' BELOW GRADE
INVERTER AND TRANSFORMER SKID (4.2MW TYP)
ARROYO 300
CULTURAL SITE LA 201909 WITH 100' SETBACK
CULTURAL SITE LA 201910 WITH 100' SETBACK
ACCESS AND UG MV CROSSING AT ARROYO 200
- ACCESS CROSSING PER NATIONWIDE PERMIT 18
- EXPECTED FILL VOLUME BELOW OHWM < 10 YD^3
- UG MV CABLE NOT TO BREAK SURFACE BELOW OHWM
ACCESS AND UG MV LINE CROSSING AT TRANSMISSION LINE
PNM YP 115KV TRANSMISSION LINE 50' EASEMENT WIDTH
TRANSWESTERN (ET) PIPELINE EASEMENT NO PV ARRAY EQUIPMENT WITHIN 50'
ACCESS AND MV CROSSING AT PIPELINE
- 35.5851°, -108.9022° & 35.5851°, -108.9104° (APPROX.)
- 50' SETBACK
- 3' EXISTING DEPTH + 2' COVER TO BE ADDED
LANDOWNER CEMETERY WITH 100' SETBACK AND PRIVATE ACCESS
ARROYO 200
WELL ABANDONMENT & RESTORATION
ACCESS AND UG MV LINE CROSSING AT TRANSMISSION LINE
PNM YN 115KV TRANSMISSION LINE. 50' EASEMENT WIDTH
WELL ABANDONMENT & RESTORATION
ARROYO 100
ATCHISON, TOPEKA AND SANTA FE RAILROAD EASEMENT
ARROYO 120
SLOPE >15%
ACCESS POINT (DEFIANCE DRAW RD)
CULTURAL SITE LA 201911 WITH 100' SETBACK
COMM. CABLE EASEMENT 30' WIDTH
DEFIANCE DRAW RD 100' RIGHT OF WAY WIDTH
POTENTIAL 0' BEDROCK LAYER (TBD)
DEFIANCE DRAW RD
General Notes
1) 112.48 MW DC
2) 89.99 MW AC; 1.25 ILR
3) INTERCONNECTING UTILITY: PNM
4) TOTAL LAND: 997 ACRES
5) TOTAL FENCED AREA: 619 ACRES
6) FENCED LENGTH: 73,019'
7) ACCESS ROAD LENGTH: 31,185' x 15' WIDE ROADS WITH 2.5' CLEARANCE ON EITHER SIDE
8) SINGLE AXIS TRACKER: 33% GCR
9) 181,440 SOLAR MODULES: 620W
10) 28 MODULES PER STRING
11) 23 SOLAR SKIDS: 4.2 MVA TYP.
12) 116 SOLAR INVERTERS: 840KW
13) AC COUPLED BESS: 50MW / 200MWh
14) 15 BESS SKIDS 4.2MVA
15) 85 BESS INVERTERS: 840KW
16) MV CABLE: 34.5 KV
17) DESIGN WIND SPEED: 97 MPH
18) SNOW LOAD: 13 PSF
19) HIGH TEMP: 36.0°C, LOW TEMP: -22.8°C
20) ELEVATION: 6551' / 1996.8 M
21) FIVE ALLUVIAL GROUNDWATER MONITORING WELLS WILL BE ABANDONED BY CHEVRON IN ACCORDANCE WITH THE NEW MEXICO OFFICE OF THE STATE ENGINEER APPROVED PLUGGING PLAN OF OPERATIONS. CONTRACTOR ARE TO AVOID DRIVING PILES DIRECTLY IN THESE AREAS.
22) MAX CAPACITY AS SHOWN: 132.77 MW DC (214,144 SOLAR MODULES: 620W)
23) NOT FOR CONSTRUCTION
No. Revision/Issue Date
Firm Name and Address
SOLARIANT
Project Name and Address
WILDCAT
Project WILDCAT
Date 01-17-2025
Scale NTS
Sheet 1/2


DEFIANCE DRAW RD
LEASE BOUNDARY
ACCESS ROAD (15' WIDE WITH 2.5' CLEARANCE ON EITHER SIDE)
CULTURAL SITE LA 201908 WITH 100' SETBACK
BESS (4.0 ACRES)
ACCESS POINT (DEFIANCE DRAW RD)
UG MV CROSSING AT ARROYO 110 AND TRANSMISSION LINE - UG MV CABLE NOT TO BREAK SURFACE BELOW OHWM
ARROYO 110 WITH 25' SETBACK
POINT OF INTERCONNECTION (35.584178°,-108.917621°)
PROPOSED GEN-TIE
SUBSTATION (2.9 ACRES) AND PNM SWITCHING STATION (4.5 ACRES) WITH PROPOSED 20' ACCESS AND TEMPORARY STAGING AREA
ACCESS POINT (DEFIANCE DRAW RD)
PROPOSED OH MV CROSSING OVER FLOOD PLAIN
FLOOD PLAIN
ACCESS POINT (DEFIANCE DRAW RD)
PROPOSED UG MV BNSF RAILROAD CROSSING
PROPOSED UG MV DEFIANCE DRAW RD CROSSING (35.5805°, -108.9188°)
AUGER REFUSAL ENCOUNTERED AT 1' BELOW GRADE
ACCESS POINT (DEFIANCE DRAW RD)
PROPOSED UG MV DEFIANCE DRAW RD CROSSING (35.5782°, -108.9140°)
CULTURAL SITE LA 170288 WITH 100' SETBACK
SLOPE >15%
SOLAR MODULE SINGLE AXIS TRACKER
FENCE
POTENTIAL 4' BEDROCK LAYER (TBD)
SHALLOW REFUSAL ENCOUNTERED AT 2.8' BELOW GRADE
INVERTER AND TRANSFORMER SKID (4.2MW TYP)
ARROYO 120
SLOPE >15%
ACCESS POINT (DEFIANCE DRAW RD)
CULTURAL SITE LA 201911 WITH 100' SETBACK
COMM. CABLE EASEMENT 30' WIDTH
DEFIANCE DRAW RD 100' RIGHT OF WAY WIDTH
POTENTIAL 0' BEDROCK LAYER (TBD)
DEFIANCE DRAW RD
ARROYO 300
CULTURAL SITE LA 201909 WITH 100' SETBACK
CULTURAL SITE LA 201910 WITH 100' SETBACK
ACCESS AND UG MV CROSSING AT ARROYO 200
- ACCESS CROSSING PER NATIONWIDE PERMIT 18
- EXPECTED FILL VOLUME BELOW OHWM < 10 YD^3
- UG MV CABLE NOT TO BREAK SURFACE BELOW OHWM
ACCESS AND UG MV LINE CROSSING AT TRANSMISSION LINE
PNM YP 115KV TRANSMISSION LINE 50' EASEMENT WIDTH
TRANSWESTERN (ET) PIPELINE EASEMENT NO PV ARRAY EQUIPMENT WITHIN 50'
ACCESS AND MV CROSSING AT PIPELINE
- 35.5851°, -108.9022° & 35.5851°, -108.9104° (APPROX.)
- 50' SETBACK
- 3' EXISTING DEPTH + 2' COVER TO BE ADDED
LANDOWNER CEMETERY WITH 100' SETBACK AND PRIVATE ACCESS
ARROYO 200
WELL ABANDONMENT & RESTORATION
ACCESS AND UG MV LINE CROSSING AT TRANSMISSION LINE
PNM YN 115KV TRANSMISSION LINE 50' EASEMENT WIDTH
WELL ABANDONMENT & RESTORATION
ARROYO 100
ATCHISON, TOPEKA AND SANTA FE RAILROAD EASEMENT
General Notes
1) 112.49 MW DC
2) 89.99 MW AC, 1.25 ILR
3) INTERCONNECTING UTILITY: PNM
4) TOTAL LAND: 997 ACRES
5) TOTAL FENCED AREA: 819 ACRES
6) FENCED LENGTH: 73,019'
7) ACCESS ROAD LENGTH: 31,165' x 15' WIDE ROADS WITH 2.5' CLEARANCE ON EITHER SIDE
8) SINGLE AXIS TRACKER:33% GCR
9) 181,440 SOLAR MODULES: 620W
10) 28 MODULES PER STRING
11) 23 SOLAR SKIDS: 4.2 MVA TYP.
12) 115 SOLAR INVERTERS: 840KW
13) AC COUPLED BESS: 50MW / 200MWh
14) 13 BESS SKIDS 4.2MVA
15) 66 BESS INVERTERS: 840KW
16) MV CABLE: 34.5 KV
17) DESIGN WIND SPEED: 97 MPH
18) SNOW LOAD: 13 PSF
19) HIGH TEMP: 35.0°C, LOW TEMP: -22.8°C
20) ELEVATION: 6551 / 1996.8 M
21) FIVE ALLUVIAL GROUNDWATER MONITORING WELLS WILL BE ABANDONED BY CHEVRON IN ACCORDANCE WITH THE NEW MEXICO OFFICE OF THE STATE ENGINEER APPROVED PLUGGING PLAN OF OPERATIONS. CONTRACTOR ARE TO AVOID DRIVING PILES DIRECTLY IN THESE AREAS
22) MAX CAPACITY AS SHOWN: 132.77 MW DC (214,144 SOLAR MODULES: 620W)
23) NOT FOR CONSTRUCTION
24) TOPO CONTOURS MAJOR: 5' MINOR: 1'
No. Revision/Issue Date
Firm Name and Address
SOLARIANT
Project Name and Address
WILDCAT
Project WILDCAT
Sheet 2/2
Date 01-16-2025
Scale NTS

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT B
ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

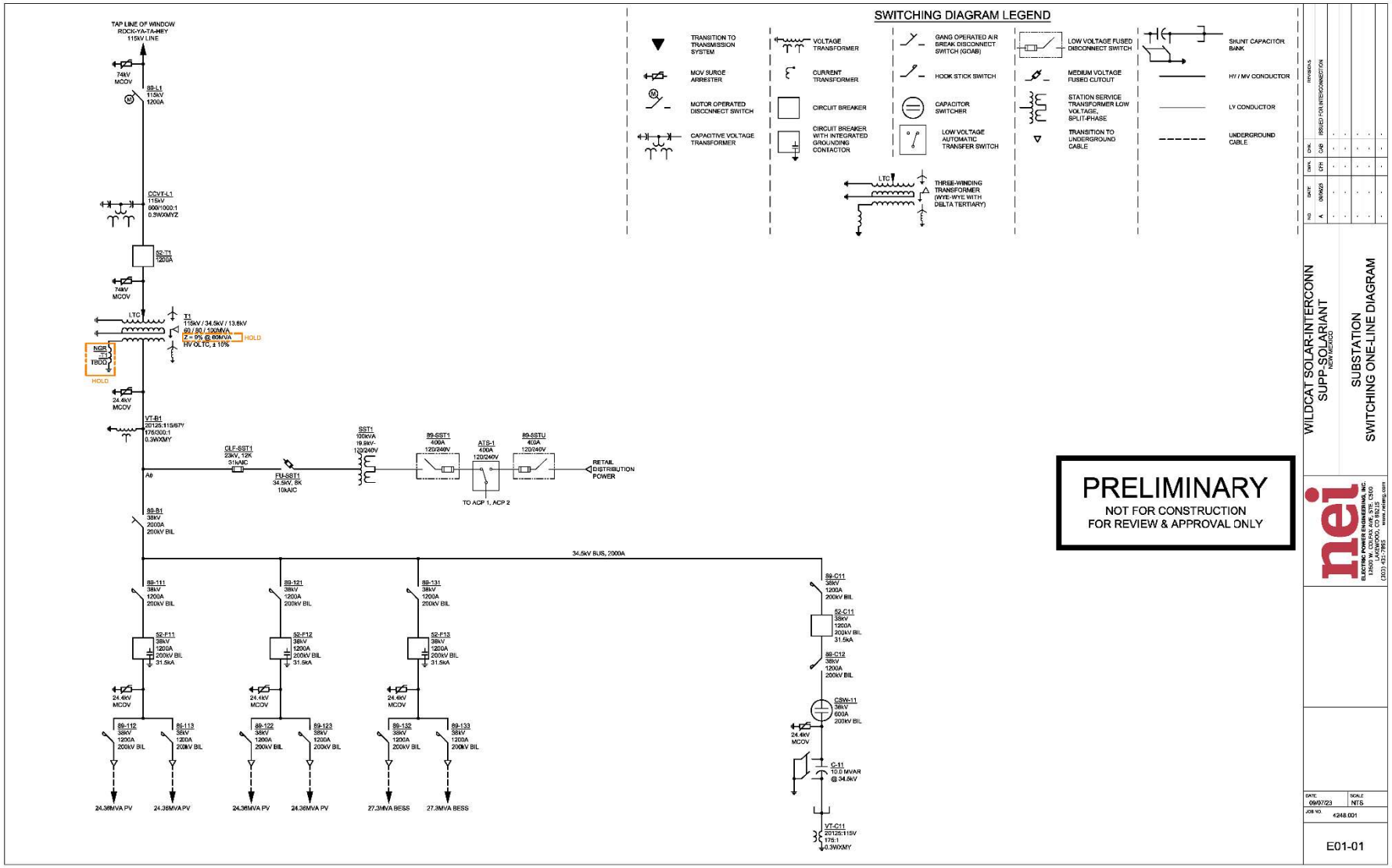
1. See attached one-line diagram and communications and telemetry diagram of the Project. The diagrams indicate the following:

    - 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.

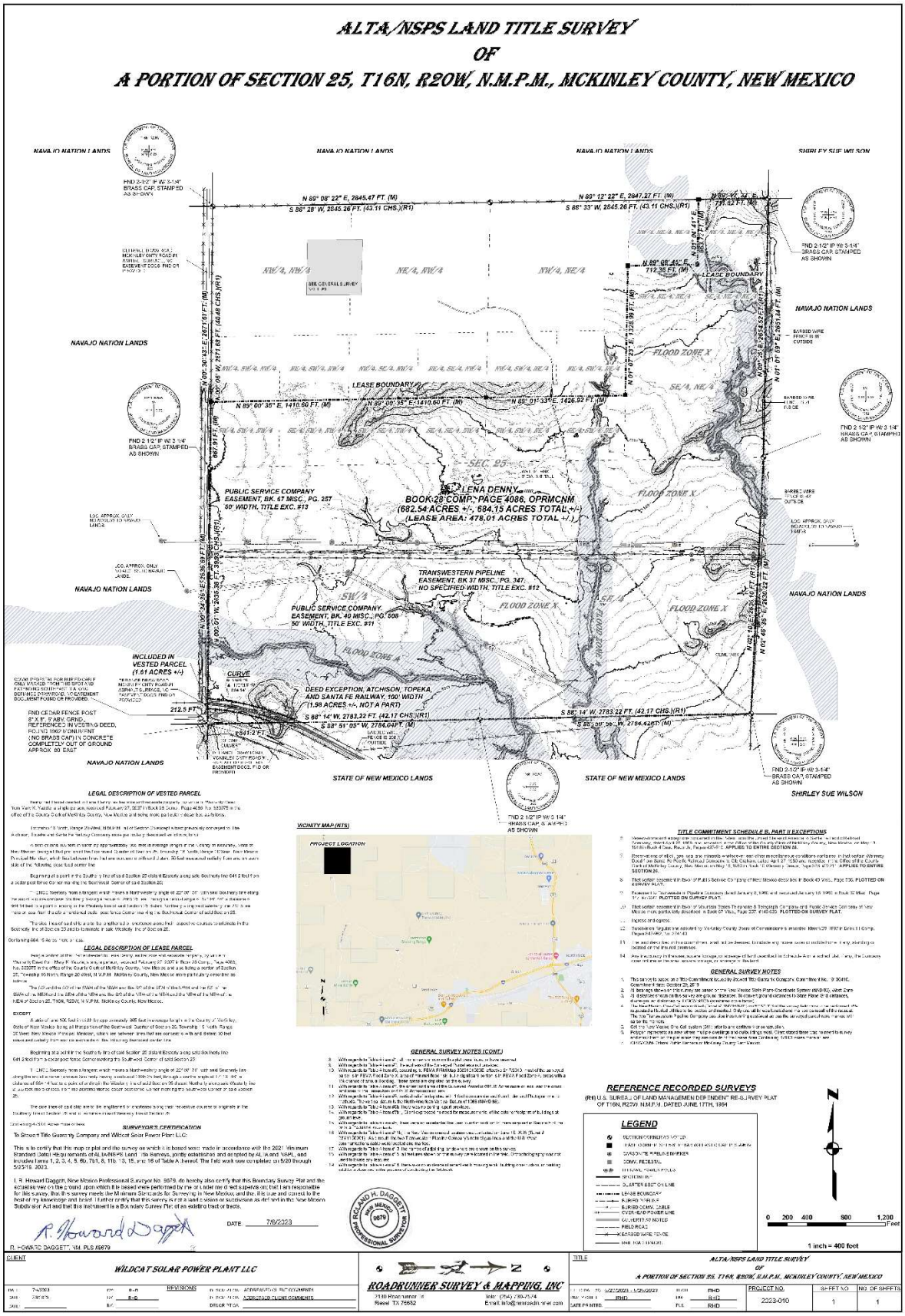
4. Point of Delivery is the Electric Interconnection Point (on PNM's Window Rock – Yah-Ta-Hey 115kV line (YN)).


SWITCHING DIAGRAM LEGEND
TRANSITION TO TRANSMISSION SYSTEM
MOV SURGE ARRESTER
MOTOR OPERATED DISCONNECT SWITCH
CAPACITIVE VOLTAGE TRANSFORMER
VOLTAGE TRANSFORMER
CURRENT TRANSFORMER
CIRCUIT BREAKER
CIRCUIT BREAKER WITH INTEGRATED GROUNDING CONTACTOR
GANG OPERATED AIR BREAK DISCONNECT SWITCH (GOAB)
HOOK STICK SWITCH
CAPACITOR SWITCHER
LOW VOLTAGE AUTOMATIC TRANSFER SWITCH
THREE-WINDING TRANSFORMER (WYE-WYE WITH DELTA TERTIARY)
LOW VOLTAGE FUSED DISCONNECT SWITCH
MEDIUM VOLTAGE FUSED CUTOUT
STATION SERVICE TRANSFORMER LOW VOLTAGE, SPLIT-PHASE
TRANSITION TO UNDERGROUND CABLE
SHUNT CAPACITOR BANK
HV / MV CONDUCTOR
LV CONDUCTOR
UNDERGROUND CABLE
TAP LINE OF WINDOW ROCK-YA-TA-HEY 115kV LINE
74kV MCOV
89-L1 115kV 1200A
CCVT-L1 115kV 600/1000:1 0.3WXMYZ
52-T1 1200A
T1 115kV / 34.5kV / 13.8kV 60 / 80 / 100MVA Z = 9% @ 60MVA HV OLTC, ± 10%
HOLD
NGR TBD
24.4kV MCOV
VT-B1 20125:115/67Y 175/200:1 0.3WXMY
CLF-SST1 23kV, 12K 31kAIC
FU-SST1 34.5kV, 8K 10kAIC
SST1 100kVA 19.8kV-120/240V
89-SST1 400A 120/240V
ATS-1 400A 120/240V
89-SSTU 400A 120/240V
RETAIL DISTRIBUTION POWER
TO ACP 1, ACP 2
89-B1 38kV 2000A 200kV BIL
34.5kV BUS, 2000A
89-111 38kV 1200A 200kV BIL
52-F11 38kV 1200A 200kV BIL 31.5kA
89-112 38kV 1200A 200kV BIL
89-113 38kV 1200A 200kV BIL
24.38MVA PV
89-121 38kV 1200A 200kV BIL
52-F12 38kV 1200A 200kV BIL 31.5kA
89-122 38kV 1200A 200kV BIL
89-123 38kV 1200A 200kV BIL
24.38MVA PV
89-131 38kV 1200A 200kV BIL
52-F13 38kV 1200A 200kV BIL 31.5kA
89-132 38kV 1200A 200kV BIL
89-133 38kV 1200A 200kV BIL
27.3MVA BESS
89-C11 38kV 1200A 200kV BIL
52-C11 38kV 1200A 200kV BIL 31.5kA
88-C12 38kV 1200A 200kV BIL
CSW-11 38kV 600A 200kV BIL
C-11 10.0 MVAR @ 34.5kV
VT-C11 20125:115V 175:1 0.3WXMY
PRELIMINARY
NOT FOR CONSTRUCTION
FOR REVIEW & APPROVAL ONLY
WILDCAT SOLAR-INTERCONN SUPP-SOLAR/ANT
NEW MEXICO
SUBSTATION
SWITCHING ONE-LINE DIAGRAM
ELECTRIC POWER ENGINEERING, INC.
DATE 09/07/23
SCALE NTS
JOB NO. 4248.001
E01-01

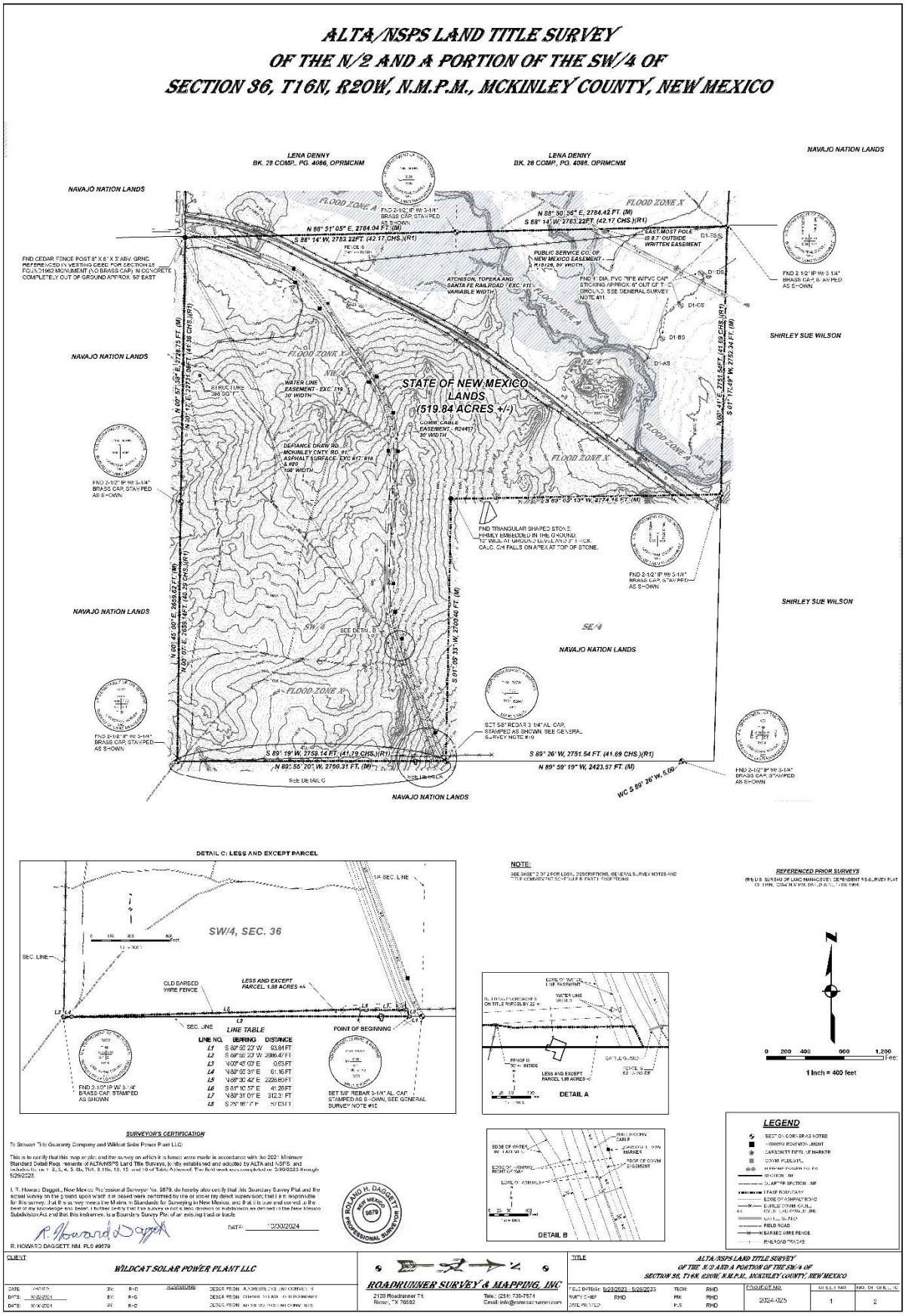
Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT C
DESCRIPTION OF SITE[1]

[1] NTD: To be updated ~60 days prior to COD.


ALTA/NSPS LAND TITLE SURVEY
OF
A PORTION OF SECTION 25, T16N, R20W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO
NAVAJO NATION LANDS
SHIRLEY SUE WILSON
STATE OF NEW MEXICO LANDS
LEASE BOUNDARY
LENA DENNY
BOOK 28 COMP., PAGE 4086, OPRMCNM
(682.54 ACRES +/-, 684.15 ACRES TOTAL +/-)
(LEASE AREA: 478.01 ACRES TOTAL +/-)
PUBLIC SERVICE COMPANY EASEMENT, BK. 67 MISC., PG. 257 50' WIDTH, TITLE EXC. #13
PUBLIC SERVICE COMPANY EASEMENT, BK. 40 MISC., PG. 508 50' WIDTH, TITLE EXC. #11
TRANSWESTERN PIPELINE EASEMENT, BK 37 MISC., PG. 347. NO SPECIFIED WIDTH, TITLE EXC. #12
DEED EXCEPTION, ATCHISON, TOPEKA AND SANTA FE RAILWAY, 100' WIDTH (1.98 ACRES +/-, NOT A PART)
INCLUDED IN VESTED PARCEL (1.61 ACRES +/-)
FLOOD ZONE X
SEC. 25
FND 2-1/2" IP W/ 3-1/4" BRASS CAP, STAMPED AS SHOWN
FND CEDAR FENCE POST 6"X 6", 0'ABV, GRND., REFERENCED IN VESTING DEED, HOLDING NO MONUMENT (NO BRASS CAP) IN CONCRETE COMPLETELY OUT OF GROUND APPROX. 80 EAST
LEGAL DESCRIPTION OF VESTED PARCEL
LEGAL DESCRIPTION OF LEASE PARCEL
SURVEYOR'S CERTIFICATION
GENERAL SURVEY NOTES (CONT.)
TITLE COMMITMENT SCHEDULE B, PART II EXCEPTIONS
GENERAL SURVEY NOTES
REFERENCE RECORDED SURVEYS
LEGEND
VICINITY MAP (NTS)
PROJECT LOCATION
1 inch = 400 feet
CLIENT
WILDCAT SOLAR POWER PLANT LLC
REVISIONS
ROADRUNNER SURVEY & MAPPING, INC
TITLE
ALTA/NSPS LAND TITLE SURVEY OF A PORTION OF SECTION 25, T16N, R20W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO
PROJECT NO.
2023-010
SHEET NO.
1
NO. OF SHEETS
1

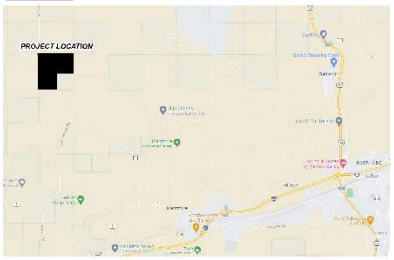
Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ALTA/NSPS LAND TITLE SURVEY
OF THE N/2 AND A PORTION OF THE SW/4 OF
SECTION 36, T16N, R20W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO

VICINITY MAP (NTS)



LEGAL DESCRIPTION OF TITLE PARCEL

BEING THE N/2 AND THE SW/4 OF SECTION 36, TOWNSHIP 16 NORTH, RANGE 20 WEST, NEW MEXICO PRINCIPAL MERIDIAN, MCKINLEY COUNTY, NEW MEXICO

CONTAINING 519.84 ACRES MORE OR LESS.

LEGAL DESCRIPTION OF LEASEHOLD PARCEL FOR WILDCAT SOLAR POWER PLANT LLC

BEING THE N/2 AND THE SW/4 OF SECTION 36, TOWNSHIP 16 NORTH, RANGE 20 WEST, NEW MEXICO PRINCIPAL MERIDIAN, MCKINLEY COUNTY, NEW MEXICO

LESS AND EXCEPT

A TRIANGULAR SHAPED PARCEL OF LAND BEING 1.68 ACRES, MORE OR LESS, NEAR AND ALONG THE SOUTH LINE OF THE SW/4 OF SAID SECTION 36 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 5/8"X 24" ALUMINUM CAP STAMPED "PLS #9679" FOR THE SOUTH QUARTER CORNER OF SAID SECTION 36;

THENCE: S 89° 35' 20" W, 99.84 FEET ALONG THE SOUTH LINE OF THE SW/4 OF SAID SECTION 36 TO THE **TRUE POINT OF BEGINNING** FOR THIS DESCRIPTION;

THENCE: S 89° 35' 20" W, 2666.47 FEET ALONG SAID SOUTH LINE TO A FOUND 3-¼" BRASS CAP STAMPED "BUREAU OF LAND MANAGEMENT, 1967", FOR THE SOUTHWEST CORNER OF SAID SECTION 36;

THENCE: N 00° 45' 00" E, 0.93 FEET ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36 TO AN OLD BARBED WIRE FENCE;

THENCE: N 89° 35' 31" E, 60.16 FEET ALONG SAID OLD FENCE;

THENCE: CONTINUING ALONG SAID OLD FENCE, N 89° 30' 42" E, 2228.60 FEET;

THENCE: CONTINUING ALONG SAID OLD FENCE, S 61° 10' 57" E, 41.28 FEET;

THENCE: CONTINUING ALONG SAID OLD FENCE, N 89° 31' 01" E, 312.31 FEET;

THENCE: LEAVING SAID OLD FENCE, S 25° 16' 17" E, 57.07 FEET TO THE **POINT OF BEGINNING**;

CONTAINING 517.96 ACRES MORE OR LESS.

GENERAL SURVEY NOTES

1. This survey is based on a Title Commitment by Stewart Title Guaranty Company, Commitment Number 2023060135, issued on July 28, 2023 at 5:00 pm.
2. All measured bearings shown on this survey are based on the New Mexico State Plane Coordinate System Grid, NAD 83 (2011), West zone.
3. All measured distances shown on this survey are ground distances. To convert ground distances to State Plane Grid distances, divide ground distances by 1.0002758125 (combined scale factor).
4. The New Mexico One-Call was notified [Ticket #23MY150901] on 5/15/2023 of the survey field work to be performed. We requested all buried utilities to be located and marked. Only one utility was located and marked as a result of the request. The communications cable lying along the east side of Defiance Draw Road was marked with pin flags.
5. Call the New Mexico One-Call system (811) prior to any earthwork or construction.
6. OPRMCMM- Official Public Records of McKinley County New Mexico.
7. COMM.- Communications.
8. (M) - Measurements made as part of this survey.
9. (tie) - Reference to prior survey of the vested parcel.
10. The South Quarter Corner was not found. It was established by single proportionate measurement on an angled line as set forth in the Bureau of Land Management Manual of Instructions for The Survey Of Public Lands, 1947, Section 373.
11. This information was provided by Client - The five points shown in the Northeast Quarter of Sect on 36 are ground water monitoring wells owned by Chevron Environmenta Management Company. The we ls range in depth from 29 to 61 feet deep. The monitoring program was abandoned in 1989.
12. With regards to Table A Item #7, all monuments for the title parcel shown on this survey plat were found or set. All other corner monuments for the Less and Except parcel were not set.
13. With regards to Table A Item #2, the address of the surveyed parcel was not provided.
14. With regards to Table A Item #3, according to FEMA Firm Map 35031C1500E, effective 2/17/2010, most of the surveyed parcel is in FEMA Flood Zone X, areas of minimal flood risk, but a significant portion is in FEMA Flood Zone A, areas with a 1% chance of annual flooding. These areas are depicted on the survey.
15. With regards to Table A Item #4, the gross land area of the vested parcel is 519.84 acres more or less and the gross land area of the Leasehold parcel is 517.96 acres more or less.
16. With regards to Table A Item #5, the vertical relief is depicted with 1' foot contours derived from Lidar and Photogrammetric methods. The vertical datum is the North American Vertical Datum of 1988 (NAVD 88)
17. With regards to Table A Item #6b, no zoning report was provided therefore the zoning and setback requirements of the surveyed parcel are unknown.
18. With regards to Table A Item #7b1, Client expressed no need for measurements of the exterior footprint of buildings at ground level.
19. With regards to Table A Item #8, there were no substantial features found in addition to those required in Section 5 of the 2021 ALTA/NSPS Standards.
20. With regards to Table A Item #11b, the New Mexico one-call system was contacted on June 15, 2023 [Ticket # 23MY150902]. The only response was to locate and mark the communications cable running along the east side of Defiance Draw Road. The cable was marked with pin flags.
21. With regards to Table A Item #16, the names of adjoining land owners are shown on this survey.
22. With regards to Table A Item #18, all features shown on this survey were located in the field. Orthophotography was not used to locate any features.
23. With regards to Table A Item #19, there was no evidence of recent earth moving work, building construction, or building additions.

SURVEYOR'S CERTIFICATION

To Stewart Title Guaranty Company and Wildcat Solar Power Plant LLC:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements of ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 1, 2, 3, 4, 5, 6b, 7a1, 8, 11a, 13, 15, and 16 of Table A thereof. The field work was completed on 5/26/2023 through 5/25/2023.

I, R. Howard Daggett, New Mexico Professional Surveyor No. 9679, do hereby also certify that this Boundary Survey Plat and the actual survey on the ground upon which it is based were performed by me or under my direct supervision. That I am responsible for this survey, that this survey meets the Minimum Standard Detail Requirements for Surveying in New Mexico, and that it is true and correct to the best of my knowledge and belief. I further certify that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act, and that this instrument is a Boundary Survey Plat of an existing parcel or parcels.

R. HOWARD DAGGETT, NEW MEXICO 9679

DATE: 10/30/2024

R. HOWARD DAGGETT, NEW MEXICO PROFESSIONAL SURVEYOR

TITLE COMMITMENT SCHEDULE B, PART II EXCEPTIONS

1. Rights or claims of parties in possession not shown by the Public Records.
2. Easements, or claims of easements, not shown by the Public Records.
3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.
4. Any lien, claim or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or Loan Policy).
6. Water rights, claims or title to water.
7. Taxes for the year 2023, or thereafter.
8. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the Proposed Insured acquires for value of record the estate or interest or Mortgage thereon covered by this commitment.
9. Reservations, terms and conditions contained in the Patent from the United States of America to the State of New Mexico recorded August 24, 1978 in Book 69 Misc., Pages 459-460, #163,516 (N ½ and SW ¼). **AFFECTS ENTIRE LEASEHOLD PARCEL.**
10. Purposely Omitted.
11. Easements as references on the Plat for Right of Way for Spur Track, recorded January 29, 1968 at #86,379. **AFFECTS THE LEASEHOLD PARCEL. SHOWN ON PLAT.**
12. Terms and Conditions contained in Coal Leases recorded July 26, 1978 as #180,246 and recorded July 27, 1978 at #181,853. **AFFECTS ENTIRE LEASEHOLD PARCEL.**
13. Right of Way Easement from the New Mexico State Land Office to the City of Gallup, recorded January 15, 1980 at #198,605. **DOES NOT AFFECT LEASEHOLD PARCEL.**
14. Purposely omitted.
15. Terms and Conditions contained in Memorandum of Oil & Gas Lease Option Agreement by and between Cordillo Land Company and Santa Fe Energy Company, recorded July 3, 1990 in Book 2 Comp, Pages 1630-1631, #252,481. **DOCUMENT PROVIDED REFERS TO OTHERS NOT PROVIDED. CANNOT MAKE A DETERMINATION.**
16. Terms and Conditions contained in Memorandum of Oil & Gas Lease Option Agreement by and between Hospah Coal Company and Santa Fe Energy Company, recorded July 3, 1990 in Book 2 Comp, Pages 1632-1633, # 241,482. **DOCUMENT PROVIDED REFERS TO OTHERS NOT PROVIDED. CANNOT MAKE A DETERMINATION.**
17. Right of Way from the State of New Mexico thru Commissioner of Public Lands to McKinley County, recorded February 2, 2005 in Book 24 Comp, Pages 936-941, No. 317031. **AFFECTS LEASEHOLD PARCEL. SHOWN ON PLAT.**
18. Easements as reference on Right of Way Survey prepared by DePaoli Engineering & Surveying, LLC, recorded August 4, 2005 in Plat Cabinet "E", Folio No. 184, No. 319993. **AFFECTS LEASEHOLD PARCEL. SHOWN ON PLAT.**
19. Grant of Right of Way from the State of New Mexico Commissioner of Public Lands to JSPS, DHHS, IHS, Navajo Area Indian Health, recorded November 19, 2018, at DOC# 387032. **AFFECTS LEASEHOLD PARCEL. SHOWN ON PLAT.**
20. Grant of Right of Way from the State of New Mexico Commissioner of Public Lands to McKinley County Board of Commissioners, recorded November 29, 2018 at DOC# 387084. **AFFECTS LEASEHOLD PARCEL. SHOWN ON PLAT.**
21. Terms and Conditions contained in the Lease by and between the State of New Mexico and Wildcat Solar Power Plant LLC, a New Mexico Limited liability company, to be recorded.
22. Intrusion of the Fence inside the North lot line, Deviation of the Fence along the East & West lot lines, encroachment of the Fence over the Southeast corner into adjacent property; and encroachment of the neighboring property's Fence and building inside the South lot line; all as referenced on ALTA/NSPS Land Title Survey prepared by Roadrunner Survey & Mapping, Inc, dated July 6, 2023.
23. Defiance Draw Road McKinley County road # 1 located within insured lot, as referenced on Boundary Survey prepared by Roadrunner Survey & Mapping, Inc., dated July 6, 2023.
24. Easements as referenced on Boundary Survey prepared by Roadrunner Survey & Mapping, Inc., dated July 6, 2023.
25. Property located within Flood Zone X and Flood Zone A as referenced on Boundary Survey prepared by Roadrunner Survey & Mapping, Inc., dated July 6, 2023.
26. Minerals of whatsoever kind, subsurface and subsurface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel in, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the public records or listed in schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
27. Any boundary discrepancy, square footage or acreage of land shown on the plat. If any. The Company does not insure the area, square footage, or acreage of the land.
28. The land described in the commitment shall not be deemed to include any house trailer or mobile home, if any, standing or located on the insured premises.
29. Ingress and egress.
30. Rights of tenants under leases, recorded or unrecorded.
31. No policy can be issued without further underwriter approval.
32. Terms and Conditions of document(s) described in Schedule A.
33. Purposely Omitted.
34. Purposely Omitted.
35. All other valid and existing rights, restrictions, reservations, covenants, conditions, rights-of-way, terms and easement of record affecting the granted land, including but not limited to matters set forth in records of the New Mexico State Land Office.
36. Reservation by the State of New Mexico of all mineral of whatsoever kind it, under or upon the Land, including, but not limited to, oil and natural gas, helium, carbon dioxide, coal and lignite, uranium, brine, salt, coops, iron, lead, talc, barite, gold and silver, precious and semi-precious stones and jewels, caliche, building stones, shale, clay sand, gravel, and all commercial valuable rock, all of the foregoing whether or not now known to exist or to be valuable, or whatever form or type, at whatever depth, in whatever natural of deposit, whether solid, semi-solid, liquid, or gaseous, whether similar or dissimilar to any of those minerals enumerated, and regardless of the method of extraction, whether by wells (including input wells), mining (including by subterranean, open pit, or strip mine), surface or sub-surface leaching or dissolution, or any other means now or hereafter known or employed.

CLIENT								T.T.L.C.					
WILDCAT SOLAR POWER PLANT LLC								ALTA/NSPS LAND TITLE SURVEY OF THE N/2 AND A PORTION OF THE SW/4 OF SECTION 36, T16N, R20W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO					
DR.	7/6/2023	JO.	RHD	REVISIONS	DESCRIPTION: ADDRESSED CLIENT COMMENTS			ROADRUNNER SURVEY & MAPPING, INC			FIELD DATE(S): 5/26/2023 - 5/25/2023	TEAM	RHD	PROJECT NO.	SHEET NO.	NO. OF SHEETS
SHT.	10/2/2024	BY	RHD		DESCRIPTION: CHANGED LEASEHOLD BOUNDARY			2135 Reado, West Pl	Tele.: (254) 730-7374		DRAWING NO.	FILE	RHD	2024-025	2	2
SHT.	10/30/2024	BY	RHD		DESCRIPTION: ADDRESSED CLIENT COMMENTS			Riesel, TX 76682	Email: rrts@wmconline.com		DATE PLOTTED					

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT D
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

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

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

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

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:
Wells Fargo Bank
ABA# 121000248
Albuquerque, New Mexico
ME Whsle Pwr Depository: 6515377916
Attn: EA-Wholesale Power Marketing

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

WILDCAT SOLAR POWER PLANT LLC

All Notices/Invoices:

Delivery Address:
1 Riverway Suite 1700, Houston, Texas 77056
Attn: DEI Green Investment Co.
Phone: (713) 640-8611

With copy to:
Gran Tokyo North Tower 1-9-1, Marunouchi, Chiyoda-ku, Tokyo 100-6730
Attn: Daiwa Energy & Infrastructure Co, Ltd.
Phone: +81-3-5555-6100

Mailing Address (if different from above):
N/A

Wire Transfer: Flagstar Bank, Routing # 026013576, Account # 1504481197 DEI GREEN INVESTMENT

With additional Notice of an Event of Default, termination and other legal notices to:
Attn: Paul Zarnowiecki
Address: Orrick, Herrington & Sutcliffe LLP
2100 Pennsylvania Avenue NW
Washington, D.C. 20037
Phone: (202) 339-8452

Project Manager:
To be updated pursuant to Section 10.1(D)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

Public Service Company of New Mexico
Attention: Laurie Williams
414 Silver Ave. SW
Albuquerque, NM 87102
Telephone: (505) 241-0641

With a copy to:

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT E

SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
Section 10 Rivers and Harbors Act	U.S. Army Corps of Engineers (USACE) Albuquerque District
Clean Water Act, Section 404 (Nationwide)	U.S. Army Corps of Engineers (USACE) Albuquerque District
National Pollutant Discharge Elimination System	New Mexico Environment Department + EPA
National Historic Preservation Act, Section 106 Concurrence	New Mexico Department of Cultural Affairs, Historic Preservation Division
State Threatened and Endangered Species	New Mexico Department of Game and Fish
Rule 551 (§ 17.9.551, New Mexico Administrative Code)	New Mexico Public Regulation Commission
Building and Electrical	New Mexico Construction Industries Division
Site Access Road Permit	McKinley County, and New Mexico Department of Transportation

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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT F
COMMISSIONING AND ANNUAL TESTING

Commissioning Tests

- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- SCADA Functionality Test (or equivalent)
- Owner Control and Data Link Functionality Tests (See Section C in this Exhibit F)
- ESS Unit Capabilities Testing
- ESS Solar Capacity Firming Test (if applicable)

Annual Testing

- ESS Unit Capabilities Testing

Commissioning Procedures

Final testing and commissioning procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements may be modified to account for factory-performed commissioning procedures and otherwise updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures. The final energy storage plant testing and commissioning process will be based on as-built design and plant configuration, and shall verify the final, as-assembled operation. The approach shall be confirmed with all equipment suppliers to ensure a safe process.

PHASE 1 – Battery to PCS

A. Battery Module
    1. Prior to installing each battery module:
        a. Test and confirm battery module voltage

B. Battery String
    1. Once the battery modules are installed in the battery rack with the necessary electrical and communication connections with the battery switchgear and Rack BMS:
        a. Confirm battery modules have auxiliary power supply
        b. Confirm battery modules communicate with rack BMS
            i. Read the System BMS and check whether the battery banks are operable, or not.
        c. Repeat steps i through ii for all battery strings connected to the PCS.
        d. Once communication is confirmed between the battery string and the System BMS, test and confirm battery string voltage on input terminals of Switchgear, one string at a time.
        e. Once complete, send all DC contactor "on" command to the System BMS and check the DC contactor's status via the System BMS.
        f. Initiate the pre-charge circuit to balance the battery strings prior per the battery vendor specifications.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

C. Battery Bank
   1. Once all of the battery strings within a bank are connected to the input on the PCS and the System BMS, and each input on the PCS is complete with the necessary battery bank connections:
      a. Confirm communication between the System BMS and the PCS (via the EMS, or direct)
      b. Confirm voltage on the PCS terminals is within the battery manufacturer requirements to connect the strings in parallel.

D. PCS
   1. Connect a temporary power supply such as a generator to the PCS to charge the battery bank.
   2. Turn on the PCS.
   3. Charge the battery bank.
   4. Disconnect the temporary power supply.
   5. Connect the PCS to a load bank.
   6. Discharge the battery bank into the load bank.
      a. Confirm the battery bank capacity (kWh) based on power for duration.

E. Repeat steps 1 through 4 for every PCS in the Energy Storage System.

F. End of Phase 1

G. PHASE 2 – PCS to MV Bus in Substation

H. Medium Voltage Block
   1. Disconnect / isolate the battery bank voltage from the PCS
   2. Connect the PCS to the medium voltage transformer.
   3. Connect the Medium Voltage Blocks to the Medium Voltage Feeder
   4. Connect the Medium Voltage Feeder to the Medium Voltage bus in the substation via the MV circuit breaker.
   5. With all blocks connected to the Medium Voltage Feeder (approximately 8-10 blocks per MV Feeder), test and commission each MV block, one at a time. (This assumes the substation is energized and capable of charging and discharging.)

      a. Charge each block to 100% SOC.
      b. Let the battery rest as recommended by the battery vendor.
      c. Discharge each block to 0% SOC.
      d. Open the MV Feeder circuit breaker upon completion.

I. Repeat steps 1 through 2 for all Medium Voltage Feeders

J. End of Phase 2

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

K. PHASE 3 – MV bus to POI

L. One MV Feeder at a time, close the MV Feeder Breaker, and energize all of the blocks on the feeder.
M. Allow the MV Feeder to charge and then discharge. Once complete, repeat step 1 for all MV Feeders.

Commissioning Testing

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

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. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this profile shall not cause the ESS to charge from the grid.

Procedure**:**

1. Record the ESS active power level at the Electric Metering Device.

2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.

3. Upon confirmation of the availability of sufficient output from Seller's other projects or to the extent of authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

SCADA Functionality Test

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

Owner Control and Data Link Functionality Test

Seller shall prepare and submit to Buyer an Owner Control and Data Link Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Owner Control and Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

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 agreement and battery manufacturer's then-current operating and testing requirements]

Commissioning and Annual 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 agreement) throughout the term of the agreement. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

A. ESS Unit Capabilities Testing

1. ESS Capacity Test

a. 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).

b. Requirements Applicable to all ESS Capacity Tests

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

i. Purpose of Test. Each ECT shall:

- determine the ESS Capacity for the purposes of this agreement;
- determine the Roundtrip Efficiency (RTE) of the ESS;

ii. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

- discharge time (minutes);
- ESS Charging Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy In**");
- ESS Discharge Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy Out**");
- 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**");
- 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**");

iii. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

iv. Test Elements and Sequence. Each ECT shall include the following test elements:

- starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate setpoint equal to the Guaranteed ESS Capacity;
- the determination of Point of Delivery Energy In, as measured by the 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.
- the discharging of the ESS from a 100% State of Charge at a power discharge rate setpoint equal to the Guaranteed ESS Capacity (MW);
- the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging at the Guaranteed ESS Capacity;
- 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 Electric Metering Device shall be programmed to correct for losses between the 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;

v. Test Conditions.

- 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.

- 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 E.1.2.F of these ESS Capacity Test Procedures.

- 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.

- 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 Article 5 of the agreement.

vi. 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), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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.

vii. 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:

- A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
- 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;
- The ESS Capacity as determined by the ECT, including supporting calculations; and
- 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 A(1)(b)(vi) of this ESS Capacity Test Procedure.

viii. Supplementary ESS Capacity Test Protocol. No later than one hundred eighty (180) 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 Project (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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

maintained by the Parties.

ix. 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 agreement, 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 agreement.

x. 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:

$$Roundtrip\ Efficiency(\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})}$$

2. ESS Response Delay Test

a. **Purpose of Test:**

i. Determine the Actual Charge Ramp Rate of the ESS

ii. Determine the Actual Discharge Ramp Rate of the ESS

b. **Test Conditions:**

The Project 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. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this test shall not cause the ESS to charge from the grid.

c. **Test procedure:**

i. Actual Charge Ramp Rate:

- Send an active power charge command of Guaranteed PMAX to charge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX charge command until the power measured at the Electric Metering Device changes from 0MW to at least 1% of charge Guaranteed PMAX shall be

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

the Charge Ramp Latency

- The time measured to ramp from 1% to charge Guaranteed 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

ii. Actual Discharge Ramp Rate:

- Send an active power discharge command of Guaranteed PMAX to discharge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX discharge command until the power measured at the Electric Metering Device changes from 0MW to at least 1% of discharge Guaranteed PMAX shall be the Discharge Ramp Latency

- The time measured to ramp from 1% to discharge Guaranteed 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

iii. **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 3.13.

- An "**Actual System Latency**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency = Max(Charge\ Ramp\ Latency, Discharge\ Ramp\ Latency)$$

- An "**Actual System Latency Delay**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency\ Delay = Max(Guaranteed\ System\ Latency, Actual\ System\ Latency) - Guaranteed\ System\ Latency$$

- An "**Actual Discharge Ramp Rate Delay**" shall be calculated, which shall be equal to:

$$Actual\ Discharge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Discharge\ Ramp\ Rate, Actual\ Discharge\ Ramp\ Rate) - Guaranteed\ Discharge\ Ramp\ Rate$$

- An "**Actual Charge Ramp Rate Delay**" shall be calculated, which shall be equal to:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

$$Actual\ Charge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Charge\ Ramp\ Rate, Actual\ Charge\ Ramp\ Rate) - Guaranteed\ Charge\ Ramp\ Rate$$

- The "**Charging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Charging\ ESS\ Response\ Delay = Actual\ Charge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- The "**Discharging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Discharging\ ESS\ Response\ Delay = Actual\ Discharge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- 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 Electric Metering Device is a positive value during an ESS Unit Capabilities test, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT G
INSURANCE COVERAGES

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

A. Workers' Compensation Insurance that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million Dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Network Security and Privacy Liability. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

F. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

G. 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 Seller 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 Seller 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 Seller 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

force or through an extended reporting period. Seller shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Seller 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT H

ROUNDTRIP EFFICIENCY GUARANTEE

	Annual R/T Eff
1	87.25%
2	87.25%
3	87.25%
4	87.25%
5	87.25%
6	87.25%
7	87.25%
8	87.25%
9	87.25%
10	87.25%
11	87.25%
12	87.25%
13	87.25%
14	87.25%
15	87.25%
16	87.25%
17	87.25%
18	87.25%
19	87.25%
20	87.25%

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT I

AVAILABILITY CALCULATIONS

Section 1. Definitions.

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

"**ESS Excused Hours**" means the aggregate Seller Excused Hours to the extent that the ESS is affected during such hours, but shall not include any hours described in clause (e) of the definition of ESS Unavailable Hours. 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 Unavailable Hours**" means those 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 ESS Excused Hour); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; (d) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy; or (e) unavailable due to the conditions described in Section 14.4. 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 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 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 Month. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the Monthly 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 Hours**" means the product of (a) twenty-four (24), multiplied by (b) the number of Days in such Month.

"**Monthly Report**" has the meaning set forth in Section 3 of this Exhibit.

Section 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 (excluding ESS Non-Performance Liquidated Damages pursuant to Section 3.13 of the agreement or ESS Roundtrip Efficiency deficiencies pursuant to Section 3.14 of the agreement) shall be reductions to the ESS Energy Payments due to any

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Monthly ESS Availability percentages that are less than 100%, and in each case 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.

Section 3. Monthly Report.

No later than the tenth (10th) Day of each 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 Month (the "**Monthly Report**").

Section 4. Disputes.

Disputes as to any calculations under this Exhibit I shall be addressed as provided in Section 13.8 of the agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ATTACHMENT 1 TO EXHIBIT I

EXAMPLE CALCULATION

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 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 Month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Monthly Hours: 720 hours

(c) Monthly ESS Availability: Sum of Monthly ESS Available Hours/Monthly Hours = 634/720 = 88.1%

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT J

FORM OF SELLER GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, _____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 [●] duly organized and validly existing under the laws of the State of [●] and has the [●] 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 [●] 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

4. RESERVATION OF CERTAIN DEFENSES.

(a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the agreement that Obligor may assert that is based on Counterparty's breach of the agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the agreement or the lack of validity or enforceability of Obligor's obligations under the agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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*):

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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:_____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT K

COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by _____("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the agreement.

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of [●] MW for [●] ([●]) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project 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: _____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT L

ESS OPERATING RESTRICTIONS

Subject to the terms of this agreement, the ESS shall be operated in accordance with the following operating restrictions:

Maximum Storage Level:	200 MWh
Minimum Storage Level:	0 MWh
Maximum Charging Capacity:	50 MW
Minimum Charging Capacity:	0.01 MW
Maximum Discharging Capacity:	50 MW
Minimum Discharging Capacity:	0.00 MW
Maximum State of Charge during charging:	100%
Minimum State of Charge during discharging:	0%
State of Charge:	0% to 100%
Ramp Rate:	10 MW/minute
Maximum Daily Cycles:	1
Maximum Time at Minimum Storage Level:	None
Maximum Auxiliary Power	45 kW
Temperature Restrictions:	In no event shall the ESS be operated if the temperature (T Celsius) is outside the following range: -40 C $\leq$ T $\leq$ 50 C
Interconnection Limit:	Subject to Section 5.1(C), 90 MW
Other Operating Limits:	Nominal Voltage: 480 V AC Output voltage range: 408 – 566 V AC Overload capability: 120% of rated current (10 s max) Frequency Range: 45Hz $\leq$ X $\leq$ 66Hz Total current harmonic distortion (THD): <5% (rated power capacity) Voltage reconnection: 88.33% $\leq$ X $\leq$ 105.83% Power factor: between 0.95 leading and 0.95 lagging

Specific ESS Operating Restrictions will be included as part of the detailed Commissioning and Testing procedures to be agreed upon by Buyer and Seller as set forth in Section 10.2 of the agreement and the ESS Manufacturer's then-current operating and testing requirements.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT M

ESS FUNCTIONAL MAPPING

The Project's NERC verified ESS Generator 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)				

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT N

INTERCONNECTION METERING STANDARD

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Interconnection Metering Standard

Public Service Company of New Mexico

Revision 8.1
03/12/2026

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

TABLE OF CONTENTS **Page No.**

1.0 OVERVIEW 2

2.0 DEFINITIONS 3

3.0 POLICY AND APPLICATION 4
3.1 Metering Types, Ownership, and Maintenance 4
3.1.A Revenue Metering 4
3.1.B Interchange / Intertie Metering 4
3.1.C Generation Interchange Metering – Including EIM market participants 4
3.1.D Instrument Transformers 4
3.1.E Communication Equipment 5
3.2 Revenue Metering Requirements 5
3.3 Interchange / Intertie Metering 5
3.4 Generation Integration Metering – Including EIM market participants 6
3.5 General Requirements for Current Transformers 6
3.6 General Requirements for Voltage Transformers 7
3.7 Instrument Transformer Connections 7
3.8 Terminal Blocks, Test Switches, etc. 8
3.8.A Terminal Blocks 8
3.8.B Test Switches & Miniature Circuit Breakers 8
3.9 Validation of Data 9
3.9.A Revenue Metering 9
3.9.B Interchange Data 9
3.10 Testing Calibration 9
3.11 Exchange of Information 9
3.11.A Prior to Meter Installation 9
3.12 Communication Circuits/Paths 10

APPENDIX A: CO-LOCATED GENERATION FACILITIES EXHIBIT 0 – SEE ADDENDUM FOR UPDATED REVISION 12

APPENDIX B: CO-LOCATED GENERATION FACILITIES EXHIBIT 1– SEE ADDENDUM FOR UPDATED REVISION 13

APPENDIX C: CO-LOCATED GENERATION FACILITIES EXHIBIT 2– SEE ADDENDUM FOR UPDATED REVISION 14

APPENDIX D: METERING VT AND CT SCHEMATIC FOR GEN-TIE/INTER-TIE 15

RECORD OF REVISIONS 3-1

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

1.0 OVERVIEW

The purpose of this document is to enable PNM to provide an application guide for both interchange metering and generation integration metering. Interconnectors shall obtain approval from PNM for any proposed changes to systems described by this document. Changes could affect construction or energization schedules.

Interconnector shall provide PNM nameplate data including accuracy and ratings information for any interconnector-owned metering equipment. Interconnectors shall also provide system diagrams to PNM including meter locations, communications paths, and instrument transformer polarity designations. Four-wire, three element metering shall be used for all new installations unless PNM provides written approval for an exception for an unforeseen special case.

PNM prefers unrestricted and unescorted physical access to PNM owned meters and related equipment located in interconnector facilities. If such access is prohibited, then the utilities' facility management shall coordinate escorted access during normal business hours. Details of shared locks or other requirements to obtain means of unescorted access shall be defined in an agreement.

In the case that an interconnector owned meter, monitored by PNM, is to be changed, those changes must be coordinated with PNM prior to the changes. Likewise, PNM will coordinate any changes to PNM owned meters, monitored by interconnectors, prior to changes.

PNM will provide interconnectors a communications port on PNM owned meters when necessary or share metering data via control center to control center data exchange protocol ("ICCP") or other communication methods when contractual agreements require revenue metering data exchange.

For metering used in the Energy Imbalance Market (EIM), this standard requires no single point of failure in capture and communication of metering data. This includes instrument transformer redundancy: one current transformer ("CT") and one voltage transformer ("VT") per phase for each meter, primary and backup. While not preferred, separate secondary circuits of an individual VT or separate CT cores may be used to fulfill this requirement. The metering scheme shall ensure no interruption of instrument transformer input to the meters during any possible switching configuration. If an interruption is possible, an alternate source with transfer capability shall be installed. When applicable, metering instrument transformers may be located on either the LV or HV side of the interconnecting transformer. Metering constant shall be applied to allow for LV side applications to adjust for transformer losses and line losses when necessary.

The latest IEEE-C57.13 and C57.13.6 standards shall apply to all instrument transformers. Refer to PNM specifications for physical and other electrical requirements.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

2.0 DEFINITIONS

AGC - Automatic Generation Control

BA – Balancing Authority

BAA – Balancing Authority Area

BES – Bulk Electric System

BESS – Battery Energy Storage System

CCVT – Capacitor-Coupled Voltage Transformer

CT – Current Transformer

BCT – Bushing Current Transformer

CVT – Capacitor Voltage Transformer

ICCP – Inter-Control Center Communications Protocol

IPoE – Internet Protocol over Ethernet

MDMS – Meter Data Management System

NERC – North American Electric Reliability Corporation

VT– Voltage Transformer

EIM – Energy Imbalance Market

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

3.0 POLICY AND APPLICATION

While the definition of wholesale and retail load is outside of the scope of this document, it is important to note that retail loads in mixed resource facilities (i.e. BESS with PV or wind) must not be served from the transmission system provider but instead through the local distribution provider. This is to demarcate clearly and simply between retail and wholesale consumption.

3.1 Metering Types, Ownership, and Maintenance

3.1.A *Revenue Metering*

Revenue Metering is metering installed to monitor power exchanged between PNM and an interconnected third-party, for the purpose of determining payment for exchanged power. Revenue metering also refers to the metering required for generation, interchange, and load data capture where necessary for data submittal to the CAISO. Hourly or sub-hourly interval data is collected using the PNM MV-90 system, using dial-up type phone communication or Ethernet connectivity. Data is typically retrieved daily or monthly.

PNM is responsible for the collection and accuracy of metering data and will require interconnector owned meters to meet PNM's standards for metering data.

Interconnectors will maintain their meters, furnish copies of test data to PNM if requested, and invite PNM to witness testing of the meters. Likewise, PNM will maintain PNM owned meters, furnish copies of test data to the interconnector if desired, and the interconnector will be invited to witness the testing.

3.1.B *Interchange / Intertie Metering*

Interchange Metering is metering installed where PNM interconnects with another Balancing Authority Area ("BAA"). "Intertie" Metering is metering for a connection between PNM and another utility or interconnector within the PNM BAA. Data requirements are continuous MWh in, MWh out, Mvarh in, Mvarh out, MW, and Mvar for input to the AGC systems of all involved Balancing Authorities (typically supplied by the meter owner). Hourly MWh data collected at the top of each hour is required directly from the meter for schedule verification and as an accuracy check of the MW analog reporting system. Data shall be provided by the meter owner to the other BAA via ICCP.

When the Interchange / Intertie meters are located in a PNM facility, PNM will own the meter at the point of interchange, maintenance and testing will be performed by PNM. The other BAA will be allowed to witness testing and will be provided a copy of test results. When the Interchange / Intertie meters are located in a facility owned by others, PNM will require the meter conform to PNM specifications and is tested to PNM standards. PNM will be allowed to witness testing and will be provided a copy of test data. PNM will be provided a communications port on the meter when necessary and allowed to obtain metering data in addition to data exchanged via ICCP.

3.1.C *Generation Interchange Metering – Including EIM market participants*

Generation Interchange Metering is a special combination of revenue and intertie metering. It is required where a generation facility is located in the PNM BAA and connects to the PNM transmission or distribution system, either directly or through facilities owned by a third party. Metering shall be installed at both the generation site and the PNM station where the agreed upon Point of Interconnection ("POI") is located.

3.1.D *Instrument Transformers*

PNM uses the PNM transmission system for power flow directional reference. For metering purposes, "*IN*" is defined as energy flowing from an interconnector, generation station, other utility, or Balancing Authority Area to the PNM system. "*OUT*" is defined as energy flowing from the PNM system to an interconnector, generation station, other utility, or Balancing Authority Area.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

In interconnector owned stations, the interconnector typically owns the instrument transformers. The interconnector shall purchase and install equipment that meets or exceeds standards and specifications provided by PNM included in this document.

3.1.E *Communication Equipment*

PNM requires primary and backup metering systems to comply with North American Electric Reliability Corporation (NERC) Standards as well as EIM participant obligations. Each interconnected resource's metering system must have its own independent, completely redundant communications path (i.e. No single point of failure for capture and transmission of metering data to PNM). PNM requires communications to the meters directly for the MV-90 metering data collection system via either dial-up telephone network or Ethernet connection to be specified during metering system design. The meter owner shall have responsibility for any dedicated non-switched circuit leased line costs for communications to either meters or RTUs.

3.2 Revenue Metering Requirements

The revenue meter shall be a solid state, bi-directional, device that meets or exceeds ANSI C12.21 in effect at the time of design. PNM specifically requires 0.2 metering class accuracy or better. The meter shall have the ability to record at least bidirectional kilowatt-hours (kWh) and kilovolt-ampere reactive hours (kvarh) load profile data.

The revenue meter must be able to provide data accumulated over a time interval. PNM's preferred interval is one (1) hour, beginning at the top of the hour. The revenue meter must also be able to store data in a five-minute demand interval. The meter shall be equipped with storage to contain all accumulated data for 45 days minimum and may be extended to as much as 120 days in the future.

The meter must be accessible for MV-90 data retrieval via an internal dial up modem or through an RS-232 or RS-485 port or (for meters already on the PNM network) network port, depending on the selected communication path.

Test blocks and switches will be clearly labelled and located near the revenue meter. The test blocks are designed to provide a means to measure input quantities from the instrument transformers and to allow the application of test quantities.

Revenue meters will be located inside a permanent building or inside a PNM-approved enclosure.

PNM requires that watt-hour meters should be accurate to ±0.1% at unity power factor for both full and light loads and to within ±0.3% for 0.5 power factor at full load. PNM also requires that Volt-ampere reactive hour (varh) metering data should be accurate to ±0.2% at unity power factor and to within ±0.6% for 0.5 power factor.

3.3 Interchange / Intertie Metering

The interchange meters shall be solid state, bi-directional, devices that meet or exceed ANSI C12.20 in effect at the time of design. Interchange meters also shall have the ability to record and report load profile data when used jointly as a revenue meter.

The interchange meter must be able to provide instantaneous analog and hourly integrated pulse data.

The meter data (kWh and kvarh) must be accessible through a port using DNP 3.0 or must be accessible by PNM via a dedicated circuit, or the BA or other utility must provide data to PNM through ICCP.

When used jointly as a revenue meter, the meter must have an RS-232 or RS-485 port or have an internal modem installed for MV-90 data retrieval by PNM.

Interchange meters will be located inside a permanent, climate-controlled building.

Test blocks and switches will be clearly labelled and located near the interchange meter. The test blocks are designed to provide a means to measure input quantities from the instrument transformers and to allow the application of test quantities. Interchange metering design must conform to NERC Standard BAL-005 Automatic Generation Control (AGC). Both continuous analog kW signals and integrated hourly kWh readings are required for interchange metering installations. The analog kW value is used by both Balancing Authority Areas (Control Areas)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

for AGC to maintain interconnection steady-state system frequency within defined limits by balancing real power demand and supply in real-time. Use of the kWh value is mandated as an hourly check on the accuracy and completeness of the telemetered analog value.

3.4 Generation Integration Metering – Including EIM market participants

The integration of generation projects within the transmission system requires both bidirectional revenue metering and interchange metering. Generation plant revenue metering is further complicated by the potential requirement to measure relatively small amounts of energy from the transmission system to the generation plant. During these times, the local distribution service provider, which may not be PNM, is the contractual energy service provider to the generation plant interconnector.

When the generating plant is producing energy, it is required to self-supply parasitic loads. Actual generating unit output is the power production at the POI.

Facilities without BESS: While other methods are possible, the most common method of supplying plant retail aux load during periods of non-generation is by back-feed from the transmission system to the plant. Meters should use extended range and accuracy CTs so that the reverse flow to the plant will be measured with the same accuracy as the much larger generation output, as this quantity is the actual retail aux load metering and the power measured is being sold to the plant by the local distribution service provider.

Facilities with BESS: In installations with BESS behind the POI which are going to be charging from the grid, it is often required that no retail aux load will be allowed to be serviced through the POI by the transmission provider. All aux load from resources behind the POI must be supplied by the resources themselves or through the local distribution provider, preferably via a direct distribution service connection. In co-located facilities, the BESS may be required to supply aux retail loads for the other facility as well. In this latter case, the billing range of the POI meter and CT should be from max generation to the minimum expected aux load in the event the BESS are unavailable.

SSVT in co-located facilities: SSVT's should preferably NOT be installed between the resource metering and the POI. If an SSVT is connected between the POI metering and the Resource Metering, it must be approved in advance and metered separately as a retail load according to specifications of the retail service provider. It will also be subtracted out of the POI flows (treated as a separate facility) so it is not included in the EIM market.

Compensation for line and transformer losses, when utilized should be accomplished in accordance with procedures defined in the latest edition of Edison Electric Institute's "Handbook for Electricity Metering". Compensation should be accomplished by applying a correction for copper losses that are proportional to the square of the current and a correction for transformer core losses or line energization losses that are proportional to the square of the voltage. These corrections should be continuous and should be added to (or subtracted from) the watt-hours and reactive volt-ampere-hours (if/when metered) passing through the electrical point of interconnection measurement.

3.5 General Requirements for Current Transformers

CTs should meet or exceed IEEE standard C57.13, C37.13.6, and all applicable ANSI C12 Series standards that are in effect at the time of design. Refer to IEEE Standard C57.13.6 (2005) for high accuracy instrument transformers.

Metering CTs at a metering point should be used exclusively for metering with no other elements in the CT secondary circuit. In cases where instrument CTs are not available, the metering CT may be used for indicating ammeters or other PNM approved low-burden devices. This is to ensure maintenance activities do not interrupt the metering measurements.

Current transformers (CTs) shall be installed, one in each phase for a four-wire wye connected metering at the POI. The installation may include redundant CT cores or separate CT columns to support the redundant metering requirements.

Metering CTs should be located in the line to measure line currents directly and should not be connected to the meter in a differential mode where the load secondary current is the difference between two or more CTs in the substation bus located on each side of the line, as is common in a ring or breaker-and-one-half bus configuration in

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

parallel and the resulting difference in secondary current is used for line current (differential mode). Dual/multi-ratio CTs can be used only if metering is connected to the full secondary ratio unless the tapped down (intermediate) ratio(s) also provide full-rated accuracy.

Three-metering-accuracy CTs, located in the line, one per phase, shall be used as the current source for interchange, generation integration and revenue metering systems. CTs shall be positioned so they measure line current for all conditions. For main-and-transfer-bus arrangements, line CTs enable proper measurement for both the normal service condition. For ring-bus and for breaker-and-one-half arrangements, with breakers on each side of the line, in-line CTs avoid the problems of questionable accuracy encountered when secondaries from two or more breaker CTs are connected in parallel and the resulting difference in secondary current is used for line current (differential mode).

CTs must be sized for optimum metering accuracy at peak and minimum loads, considering current transformer rated accuracy, rating factor (RF) and fault current withstand capabilities.

Minimum accuracy class shall be 0.3B1.8, RF=2.0. In order to measure low currents, higher accuracy CTs may be applied (i.e., 0.15B1.8 or 0.15S1.8 class or special extended range metering CTs). The thermal current rating factor (RF not to exceed 4) must limit the secondary current to not exceed 20A for Class 20 meters. For BESS/PV/Wind Interconnections, recommended POI CT Specifications are typically based on POI limits and/or connected total GSU Transformer MVA. "TF 4.0 with 0.3 accuracy or better from T.F. to 0.2% nominal or better" is a typical spec with the CTR chosen as low as practical, accounting for appropriate thermal / altitude de-ratings.

3.6 General Requirements for Voltage Transformers

Three phase-ground connected voltage transformers shall be installed at the designated POI, connected phase to station ground. Wound VTs shall be used for applications at 115kV and below. Capacitive voltage transformers (CVT or CCVT) may be applied on EHV and UHV installations.

Accuracy rating requirements (minimum): 0.3 W, X, Y, Z (and 0.3 ZZ if applicable based on expected loading) dedicated VTs should furnish nominal 115V line to neutral to meters.

PNM prefers the following ratios for VT:

System Voltage (kV-LL)	Winding X Ratio:1	Winding Y Ratio:1
345	1800	1800
230	1200	1200
115	600	600

3.7 Instrument Transformer Connections

The wiring for the secondary circuits of metering CTs should utilize separate leads from each secondary terminal of the CT to the meter test block. When a common CT secondary return conductor is utilized, the conductor should be separate from the common return of the voltage transformers. Regardless of which method is used (i.e., separate leads or a common return conductor); the CT commons shall be grounded at only one point, preferably at the test switch near the meter. The VT commons should preferable be grounded at one point, also.

All VT secondary wiring supplying voltage to revenue meters should be a minimum of #12 AWG copper and should be limited to the minimum length necessary to complete the circuit to the metering device. Exception: SIS internal to the metering panel may be #14 AWG copper.

All CT secondary wiring supplying current to revenue meters should be a minimum of #10 AWG copper and should be limited to the minimum length necessary to complete the circuit to the metering device. Exception: SIS internal to the metering panel may be #12 AWG copper.

Short lengths of smaller conductors on switchboard panels may be utilized provided the additional burden imposed by these conductors is negligible when compared to the overall circuit burden.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

3.8 Terminal Blocks, Test Switches, etc.

3.8.A *Terminal Blocks*

PNM uses two sets of terminal blocks in the CT secondary circuits for each meter:

- One set of shorting ring-lug terminal blocks in the yard's CT junction box (or breaker cabinet for BCTs), where the CT winding wires terminate.
- One set of ring-lug terminal blocks on the billing meter control panel, where the control house cables from the marshalling cabinet terminate.

There are three sets of terminal blocks in the VT secondary circuits for each meter:

One set of terminal blocks is located within the yard's VT junction box, where the VT winding wires are terminated.

One set of terminal blocks in the marshalling cabinet, where the yard cables terminate.

One set of bolt connection terminal blocks is located on the billing meter control panel, where the control house cables from the marshalling cabinet terminate.

3.8.B *Test Switches & Miniature Circuit Breakers*

PNM uses 10-pole, current test switch blocks for the CT circuit terminations in the marshalling cabinets. The test switch blocks on the billing panels are 10-pole with 6-poles of current test switches (for CT cable termination) and 4-poles of potential test switches (for VT cable termination).

There will be two sets of current test switches in the CT secondary circuits for each meter:

- One set is located in the marshalling cabinet, where the CT secondary circuit yard cables terminate in the control house. These test switches short to ground when opened.
- Another set is located on the billing meter panel, where the CT secondary circuit panel cables terminate. When open, these switches bypass the meter's current terminals and short to ground.
- No other switch(es), test block, fuses or other quick disconnecting means shall be placed in the secondary circuits of the CTs.

There will be one set of dedicated potential test switches and a miniature circuit breaker in the VT secondary circuits for in the metering panel for each meter:

- The VT secondary circuit isolation MCB is a 3-pole, 6 amp or smaller, type K miniature circuit breaker in the billing meter panel.
- Next in series, before finally terminating at the meter's voltage inputs, are the test switches located on the billing meter panel. These switches isolate the meter's voltage terminals from the VT secondary circuits when opened.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

3.9 Validation of Data

3.9.A *Revenue Metering*

PNM's meter will be the source of certifiable final data in installations where interconnectors also install their own measurement devices.

Where applicable, revenue data may be checked against the interconnector's meters and/or SCADA data for validating purposes.

3.9.B *Interchange Data*

NERC Standards: BAL-005 Automatic Generation Control

3.10 Testing Calibration

New revenue meters should be acceptance tested. All tests should be made at nominal nameplate rating. The series test points should be at Full Load (FL), Light Load (LL) and Power Factor (PF). FL is at 5 amperes at unity power factor. LL is at 0.5 amperes (10% of FL) at unity power factor and the PF test point is at 5 amperes at 0.5 power factor.

If the revenue meters are compensated for line and/or transformer losses, they should be tested both with and without loss compensation to determine the accuracy of the compensation at each test point (i.e., FL, LL and PF). Since this requires access to an accurate and stable voltage and current source, it should be done prior to installation.

3.11 Exchange of Information

3.11.A *Prior to Meter Installation*

Prior to installation, the metering authority should furnish all stakeholders with pertinent metering information that includes but not limited to the following:

Connection diagram(s) and schematics (including station one-line/three-line, and communication diagrams.)

Type and rating of revenue meters, current and voltage transformers, and other associated devices. (Including device nameplates)

Copies of certificates of test for the metering current and voltage transformers. When certificates are not available, a typical curve for the type of transformers should be furnished, and the parties should agree on the transformer correction, if any, to be applied.

Secondary burdens applied to the voltage and current transformers.

The resistance and reactive impedance of the voltage transformer secondary leads.

The derivation of compensated metering correction, if used, and the method of compensation.

The meter information required by PNM is as (but not limited to) the below:

a. Revenue Billing

- kWh and kvarh Data

b. Interchange Accounting

- kWh Data
- kW (or MW) and kvar Data

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

c. Meter Test Data

- IN and OUT Definitions
- Revenue and Interchange Metering INs and OUTs
- Generation Integration INs and OUTs

3.12 Communication Circuits/Paths

Communication paths for revenue metering generally include the following:

MV-90 (Revenue Meter Data) to PNM'S MDMS,via IPoE or a modem connection

SCADA (Indication Meter Data) to PNM's EMS and Backup EMS (PowerOps and BCC), via IPoE to the station RTU, and fiber to the EMS(s).

Example Proposed Data Flow for Co-Located Facility:

- Metering data flow to RC through PNM meters
  - PNM POI meters (primary and secondary ION) provide metering values to RC and retain the official MV-90 billing data
  - Two serial RS485 over fiber communications paths between PNM and co-located facility to bring resource meter data to the PNM POI meters(Pri and BU PNM meters or metering-RTACS pull information from Pri and BU co-located facility metering or metering-RTACS respectively)
  - *[if SEL-735 meters or if otherwise desired, IONs may not need]*
    - 2 co-located facility metering-RTACs (1 RU total rack space 3530#MDFM) at co-located facility to provide resource meter data to PNM via RS485 (or RS232 if applicable). Function of RTACs will be to pull meter information from co-located facility resource meters over the co-located facility IP network, perform complex POI compensation calculations (which SEL 735 is not capable of on own), and provide resource metering output information to PNM meters via RS485 (or RS232 if applicable) serial connection.
    - NOTE: Recommended RTAC package 3530#MDFM includes ability to log interval data to provide a virtual check meter function for co-located facility without needing to add another set of meters to the site. (Recommendation for check meter functionality would involve also adding a SEL-TEAMs license. This package can be obtained for nominal amount by "adding" to the purchase of any one of the SEL-735 meters after the fact.)

- Metering calculations philosophy outline
  - Resources will be Compensated to POI using I^2*R method for losses, compensated resource estimates will be provided to PNM
  - Difference between PNM measured POI total and co-located facility calculated/estimated POI total to be divided amongst the resource meter registers in a proportional (or other mutually agreed upon) manner.
  - Different registers used for different resources, values provided to RC directly from the redundant PNM POI meters via the redundant PNM RTUs. These same registers provided ATF (After The Fact) billing information to Transmission Company via MV-90 from the PNM POI meters.
  - Different registers used for any retail load (if applicable, may not be applicable if properly arranged and agreed upon). These retail registers provide AFT billing information to Local Distribution Company via MV-90 from the PNM POI meters (again, only if applicable).

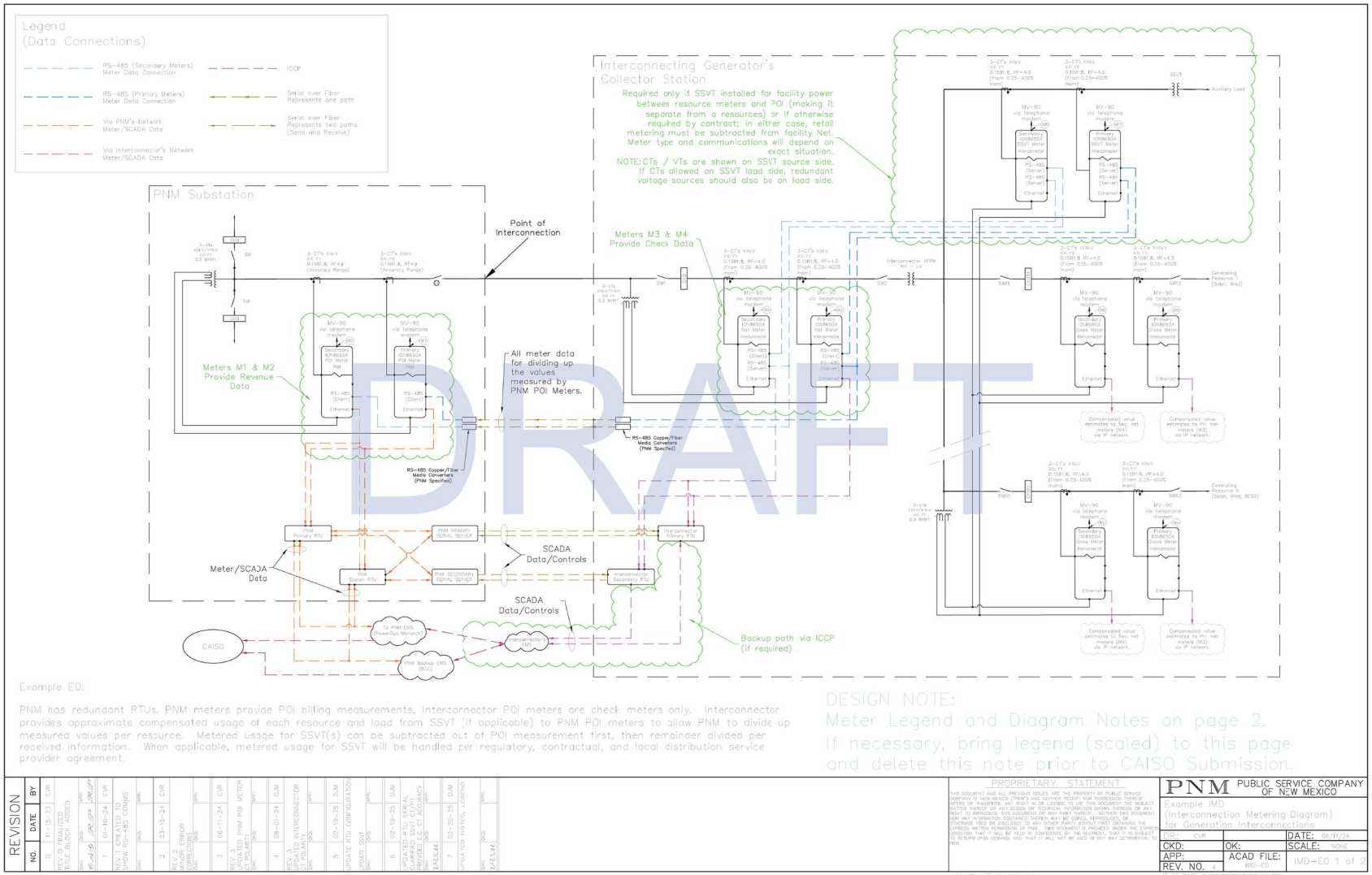
- Dial Up capability
  - *[If requested by co-located facility,]* Two phone lines provided from PNM *[typically]* using POTS over fiber converters (TC COMUNICATIONS PN TCRM195R-S-25 is the chassis which will hold the two TC1901R-L1ST-2-12 and integrated power supply).
  - PEX system will be used to reach all meters via phone extensions (TC COMMUNICATIONS PN TCRM19BR-25-25 is the chassis which will hold the four TC3848R-1-000-4-0-05 and the one TC3840R-5-000-1-1-05 cards and redundant power supplies).
  - Dial Up capability to the co-located facility meters may be used by PNM as backup in case of unexpected data loss or compensation-math integrity checks.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Other arrangements from the above example data flow may be required based on technical or contractual obligations. Please see Appendices A to C for representative example setups and additional considerations. **Final requirements must be obtained from and agreed to by PNM Transmission Power Operations and affected Local Distribution Company on a project to project basis.**

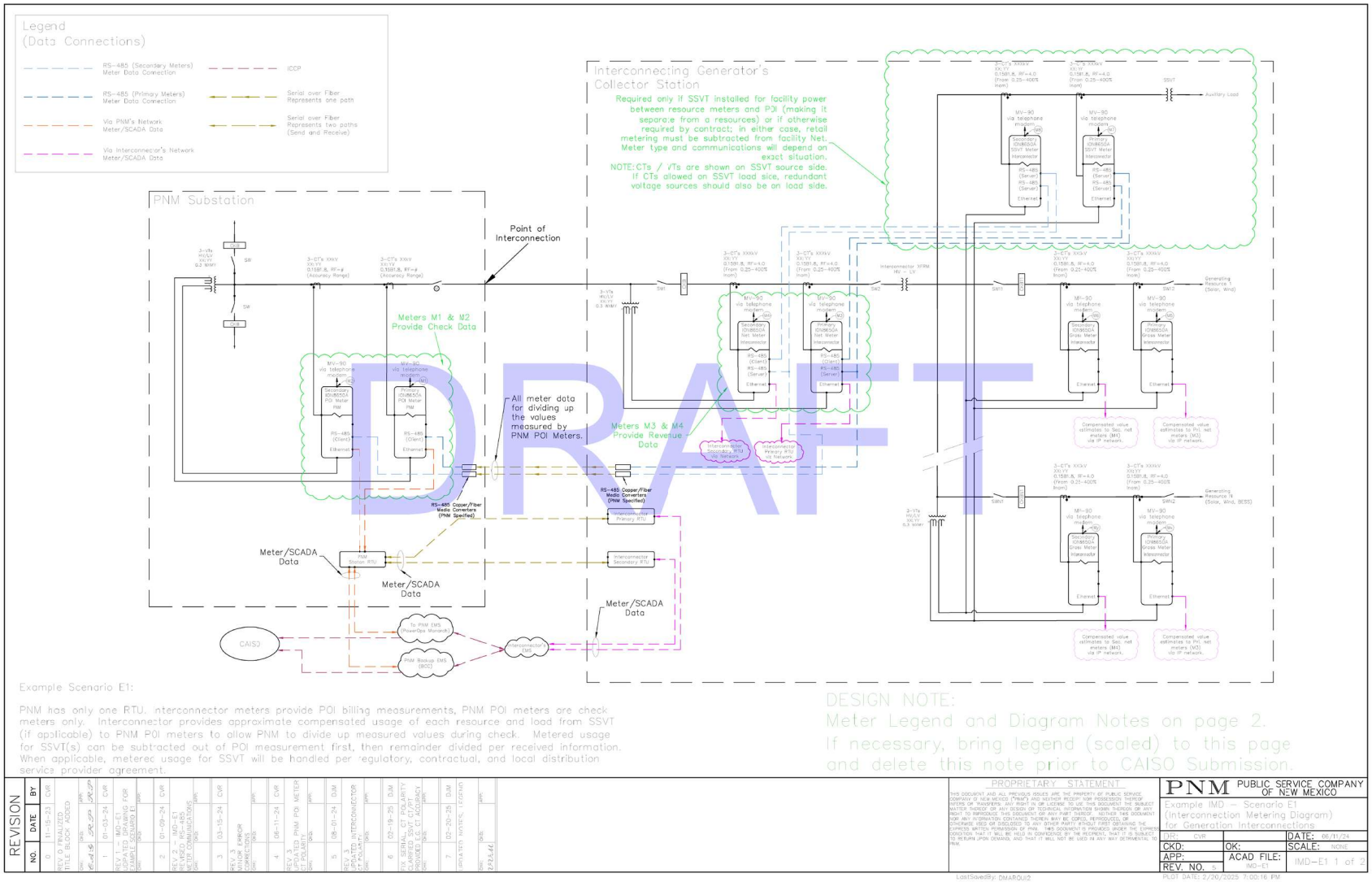
Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

APPENDIX A: CO-LOCATED GENERATION FACILITIES EXHIBIT 0 – SEE ADDENDUM FOR CLEARER IMAGE / ANY UPDATES



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

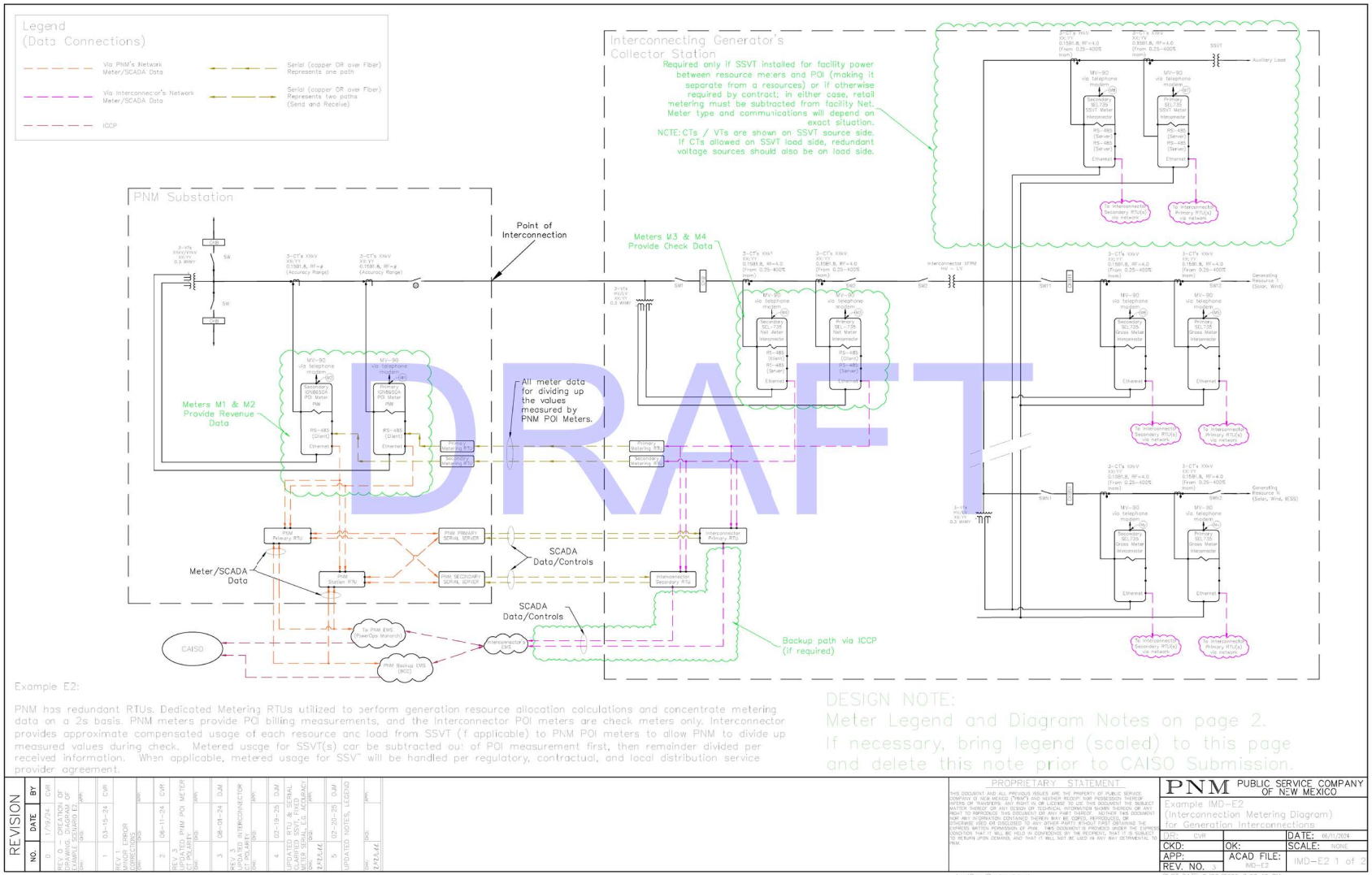
APPENDIX B: CO-LOCATED GENERATION FACILITIES EXHIBIT 1– SEE ADDENDUM FOR CLEARER IMAGE / ANY UPDATES



DRAFT

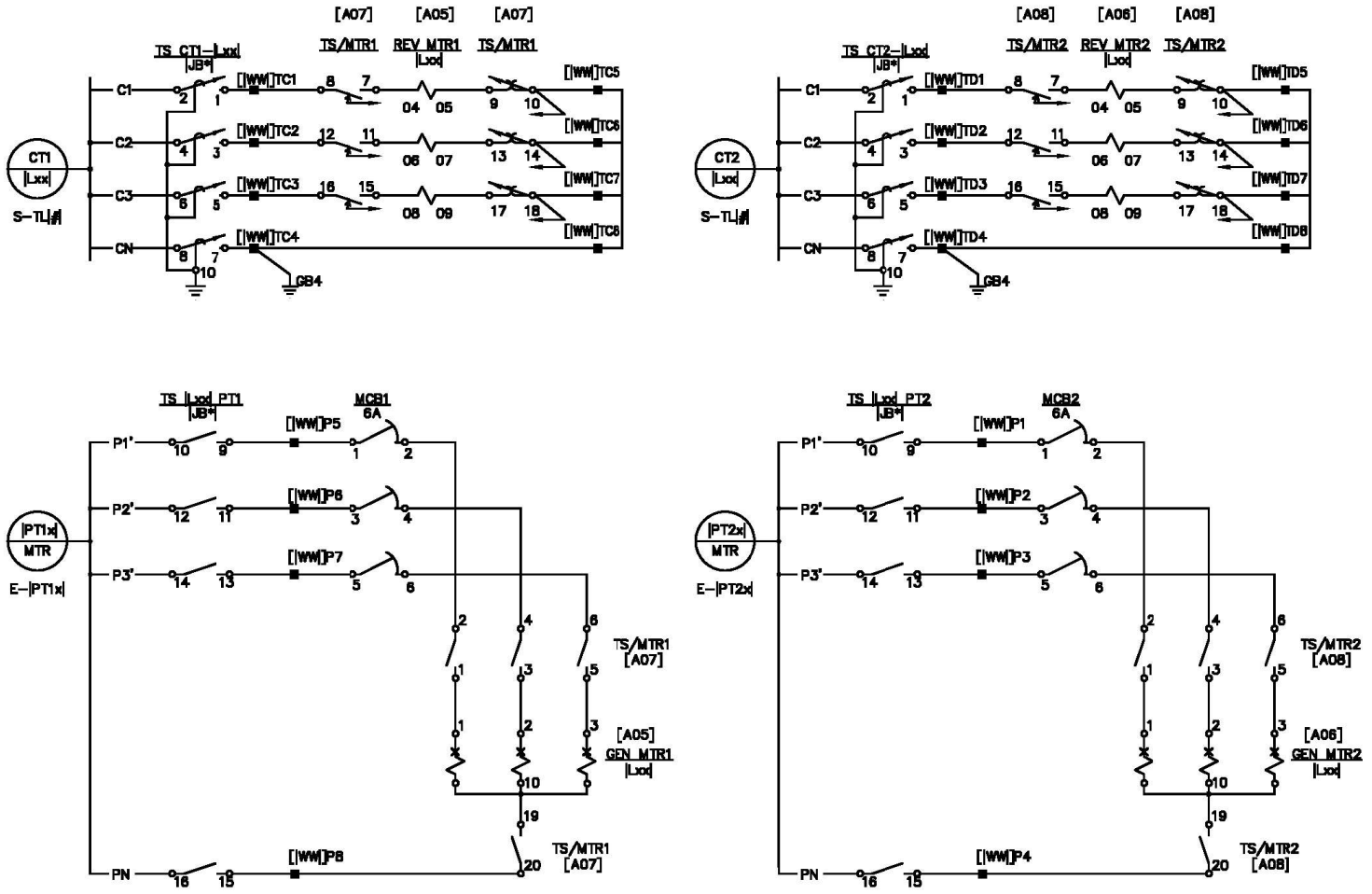
Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

APPENDIX C: CO-LOCATED GENERATION FACILITIES EXHIBIT 2– SEE ADDENDUM FOR CLEARER IMAGE / ANY UPDATES



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

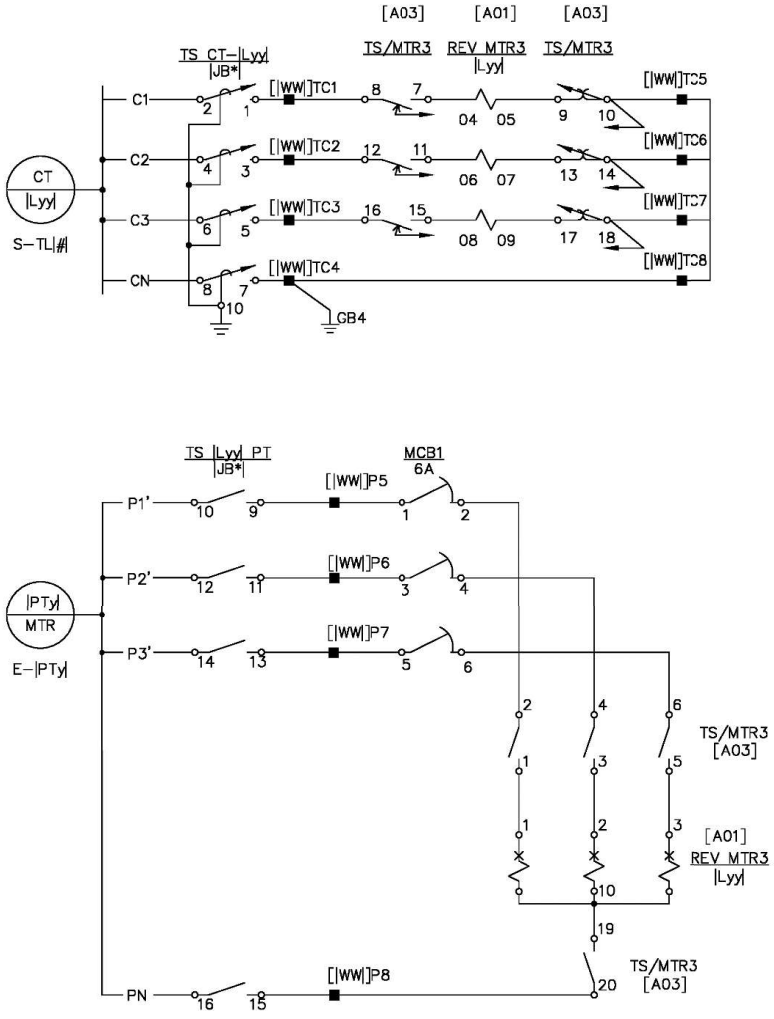
APPENDIX D: METERING VT AND CT SCHEMATIC FOR GEN-TIE/INTER-TIE



GEN–TIE/INTER–TIE PRIMARY AND BACKUP METERS

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

APPENDIX E: VT AND CT CONNECTIONS TO METER FOR LOAD



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

RECORD OF REVISIONS

Revision No.	Date	By	Description	Approved By
DRAFT-0	4/11/2022	RDP	Created Draft	RDP
DRAFT-1	7/5/2022	CVR	Created Document Outline and initial draft of body text	RDP
DRAFT-2	8/11/2022	RDP, CVR	First round of review and editing of body text content	RDP
DRAFT-3	10/10/2022	CVR	Second round of review and editing of body text content	
DRAFT-4	2/27/2023	CVR	Updated diagrams in Appendix A & B	
DRAFT-5	4/5/2023	CVR	EIM and PowerOps Review comments incorporated	
DRAFT-6	6/16/2023	CVR, DM	Updated Appendix A Example Metering One-Line	
DRAFT-7	11/9/2023	CVR, DM	Added paragraph regarding retail load to section 3.0	
FINAL-8	03/15/2024	CVR, DM	Multiple revisions to specifically address special metering needs of Co-Located Facilities: Data flow, Resources. Also clarified / added wording multiple sections.	MS
DRAFT 8.1	03/12/2026	DM	Correct easily misunderstood or erroneous or obsolete statements and provide clarifications based on field experience.	

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT O

PREPARATION FOR COMMISSIONING

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 agreement and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the agreement and complete all testing as defined in Exhibit F of the agreement.

Figure 1 is for reference purposes only.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the agreement.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.

CONTACT	Company	Group	Address	Project Role	Office Phone	Mobile Phone	E-MAIL
(name)	PNM	Generation Engineering	2401 Aztec Rd NE Albuquerque, NM 87107	Contract Manager	505-241-XXXX	505-241-XXXX	…@pnm.com

The POC List shall identify, but not be limited to, the following:

Buyer Team: Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.

- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.

- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.

- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect modeling for functionality required for the participating resource schedule coordination (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.

- "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- **"Project Manager" –** Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.

- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.

- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 Authority (BA)
  - 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:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

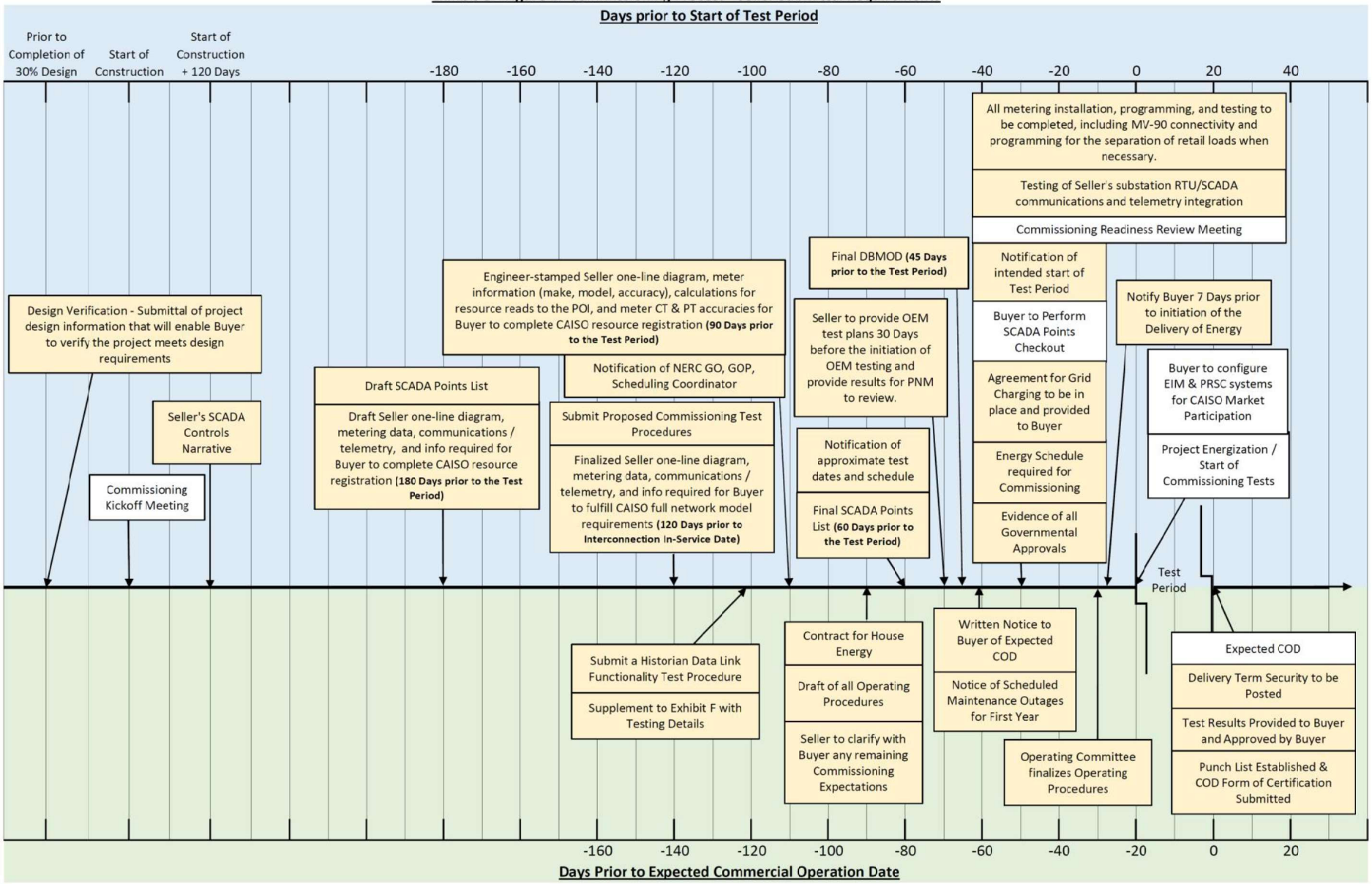
TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving agreement 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	10 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing.	**Seller**	Buyer's Project Manager	Prior to the scheduled performance testing
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	Prior to the scheduled performance testing
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. 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. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
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
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 agreement 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

- 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 agreement) 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

    - 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. DERMS Workbook inputs:
   a. Seller shall provide required information for the DERMS, including:
      - SCADA keys, resource characteristics, meteorology, etc.
      - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 the test evaluation results might 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 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.

Gila Monster Energy Storage LLC Energy Storage Agreement

PNM Exhibit GBB-8

Is contained in the following 131 pages.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ENERGY STORAGE AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

GILA MONSTER ENERGY STORAGE, LLC

Dated as of April 17, 2026

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ENERGY STORAGE AGREEMENT 1
ARTICLE 1 Definitions and Rules of Interpretation 1
1.1 Definitions 1
1.2 Rules of Construction. 19
1.3 Interpretation with Interconnection Agreement. 20
1.4 Interpretation of Arrangements for Electric Supply to the Project. 21
ARTICLE 2 Term and Termination 21
2.1 Execution Date and Term. 21
ARTICLE 3 Project Description 22
3.1 Commercial Terms. 22
3.2 Project. 22
3.3 Location. 22
3.4 General Design of the Project. 23
3.5 Expected Commercial Operation Date. 24
3.6 Extension of Expected Commercial Operation Date. 24
3.7 Delay Damages. 25
3.8 ESS Capacity Shortfall Damages. 25
3.9 Test Period. 25
3.10 Notice of Commercial Operation. 26
3.11 Charging. 26
3.12 ESS Unit Capabilities. 26
3.13 ESS Non-Performance Liquidated Damages. 27
3.14 Guaranteed ESS Roundtrip Efficiency Payment. 27
3.15 Prohibition Against Acquisition, Importation, Transfer, or Installation. 27
3.16 Eligible Change in Tariff. 28
ARTICLE 4 AGC; ESS Curtailment 28
4.1 AGC. 28
4.2 ESS Curtailment. 28
ARTICLE 5 Delivery and Metering 28
5.1 Delivery Arrangements. 29
5.2 Availability Reporting. 29
5.3 Electric Metering Devices. 29
5.4 Adjustment for Inaccurate Meters. 31
ARTICLE 6 Conditions Precedent 31

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

6.1 Conditions Precedent. 31
6.2 Notice. 32
ARTICLE 7 Sale and Purchase of Product 32
7.1 Sale and Purchase of Product. 32
7.2 Title and Risk of Loss. 32
7.3 Future Environmental Attributes. 32
7.4 Scheduling. 33
7.5 Forced Outages. 33
ARTICLE 8 Payment Calculations 33
8.1 Billing Components. 34
8.2 Payment Support Requirement. 34
8.3 Survival on Termination. 34
ARTICLE 9 Billing and Payment Procedures 35
9.1 Statements and Payment of Electricity Payments. 35
9.2 Miscellaneous Payments. 35
9.3 Currency and Method of Payment. 35
9.4 Default Interest. 35
9.5 Disputed Items. 36
9.6 Statement Errors. 36
9.7 Taxes. 36
9.8 Setoff and Payment Adjustments. 37
9.9 Netting. 37
9.10 Survival on Termination. 37
ARTICLE 10 Operations and Maintenance 38
10.1 Construction of the Project. 38
10.2 Commissioning and Testing. 39
10.3 Access to and Inspection of the Project. 39
10.4 Operating Parameters. 40
10.5 Operating Procedures. 40
10.6 Project Maintenance. 42
10.7 Sales to Third Parties. 43
10.8 Monthly Operational Report. 43
10.9 [Reserved]. 43
ARTICLE 11 Future Environmental Attributes 43

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

11.1 Sale of Future Environmental Attributes. 43
ARTICLE 12 Default and Remedies 44
12.1 Events of Default of Seller. 44
12.2 Events of Default of Buyer. 46
12.3 Damages Prior to Termination. 47
12.4 Termination. 47
12.5 Specific Performance. 48
12.6 Remedies Cumulative. 48
12.7 Waiver and Exclusion of Other Damages. 49
12.8 Payment of Amounts Due to Buyer. 49
12.9 Duty to Mitigate. 49
12.10 Security Rights. 49
ARTICLE 13 Contract Administration and Notices 49
13.1 Notices in Writing. 49
13.2 Representative for Notices. 50
13.3 Authority of Representatives. 50
13.4 Records. 50
13.5 Provision of Real-Time Data. 51
13.6 Examination of Records. 51
13.7 Exhibits. 52
13.8 Resolution of Issues. 52
ARTICLE 14 Force Majeure 52
14.1 Definition. 52
14.2 Notification Obligations 54
14.3 Duty to Mitigate. 54
14.4 Force Majeure Event Occurring After Commercial Operation. 54
ARTICLE 15 Representations, Warranties and Covenants 55
15.1 Seller's Representations, Warranties and Covenants. 55
15.2 Buyer's Representations, Warranties and Covenants. 57
ARTICLE 16 Insurance 57
16.1 Evidence of Insurance. 58
16.2 Term and Modification of Insurance. 58
16.3 Endorsements and Other Requirements. 58
ARTICLE 17 Legal and Regulatory Compliance and Governmental Approval 59

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

17.1 Applicable Laws. 59
17.2 Governmental Approvals. 59
17.3 NMPRC Approval. 59
17.4 Compliance with Reliability Standards. 60
17.5 Compliance Information. 60
ARTICLE 18 Assignment and Other Transfer Restrictions 61
18.1 No Assignment Without Consent. 61
18.2 Conditions on Transfers. 61
18.3 Change of Control. 61
18.4 Transfer Without Consent Is Null and Void. 62
18.5 Subcontracting. 62
18.6 Assignment to Lenders. 62
ARTICLE 19 Credit and Security Requirements 63
19.1 Security. 63
19.2 Form of Security. 63
19.3 Grant of Security Interest. 64
19.4 Use of Security. 64
ARTICLE 20 Indemnity; Insurance Proceeds 64
20.1 Indemnification. 64
20.2 Notice of Claims; Procedure. 65
20.3 Insurance Proceeds. 66
ARTICLE 21 Governmental Charges 66
21.1 Allocation of Governmental Charges. 66
ARTICLE 22 Miscellaneous 66
22.1 Waiver. 66
22.2 Fines and Penalties. 66
22.3 Standard of Review 67
22.4 Disclaimer of Certain Third Party Beneficiary Rights. 67
22.5 Relationship of the Parties. 67
22.6 Equal Employment Opportunity Compliance Certification. 67
22.7 Survival of Obligations. 68
22.8 Severability. 68
22.9 Complete Agreement; Amendments. 68
22.10 Binding Effect. 68

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

22.11 Headings. 68
22.12 Counterparts. 68
22.13 Governing Law. 68
22.14 Confidentiality. 69
22.15 Marketing Rights; Press Releases and Media Contact; Access. 71
22.16 Right to Mortgage. 71
22.17 Forward Contract and Master Netting Agreement. 72
22.18 Accounting Matters. 72
22.19 Telephone Recording. 73
22.20 Market Event 74

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBITS

Exhibit A	Description of Seller's Energy Storage Facilities, Site Map, and Project Schedule
Exhibit B	One-Line, Communications and Telemetry Diagrams of Project and Interconnection Facilities
Exhibit C	Description of Site Parcel Survey
Exhibit D	Notice Addresses
Exhibit E	Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
Exhibit F	Commissioning and Annual Testing
Exhibit G	Insurance Coverages
Exhibit H	Roundtrip Efficiency Guarantee
Exhibit I	Availability Calculations
Exhibit J	Form of Seller Guaranty
Exhibit K	Commercial Operation Form of Certification
Exhibit L	ESS Operating Restrictions
Exhibit M	ESS Functional Mapping
Exhibit N	Interconnection Metering Standard
Exhibit O	Preparation for Commissioning

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (this "**ESA**"), as may be amended from time to time, is entered into this [●] Day of [●], [●] ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Gila Monster Energy Storage, LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 100 Bayview Circle, Suite 340, Newport Beach, CA 92660. 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 agreement.

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

"**Actual Charge Ramp Rate**" means the maximum rate that the ESS can change its input power, as determined pursuant to Exhibit F.

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Actual Discharge Ramp Rate**" means the maximum rate that the ESS can change its output power, as determined pursuant to Exhibit F.

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

"**Actual System Latency**" means the time measured between when the control signal is received by the ESS and when the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as determined pursuant to 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 agreement 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 accepts communications from the System Control Center and 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, Black Start Capability, 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

"**Black Start Capability**" means that the ESS inverters shall be provided with the ability to form an islanded grid inside the Project while disconnected from the Point of Delivery if Buyer instructs Seller to reserve stored energy for this function. The ESS will not be designed to provide grid forming capability below a zero percent (0%) ESS State of Charge. Buyer may enhance the Black Start Capability after the Execution Date if (a) Buyer provides specifications for an enhanced Black Start Capability, (b) the specifications are within the capabilities of Seller's ESS integrated equipment and controls system supplier, and (c) Buyer pays all costs associated with upgrading the ESS to the enhanced Black Start Capability specifications as verified by an independent engineer. Upon the satisfaction of all of (a), (b) and (c) in the preceding sentence, Seller shall upgrade the ESS to the enhanced Black Start Capability specifications within eighteen (18) months.

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

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

"**Buyer Costs**" means 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 agreement or entering into new arrangements which replace this agreement; and all reasonable attorneys' fees and expenses incurred by Buyer in connection with the termination of this agreement, to the extent such costs are not already included in Replacement ESS Costs.

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

"**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

"**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 direct or indirect 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 the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the Commissioning Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this agreement; 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 K, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation 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 Energy Payments expected to be made in each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination) which is to be determined in accordance with the calculation in Section 8.1(A). All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Creditworthy**" or "**Creditworthiness**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa3" or higher by Moody's, (b) "BBB-" or higher by S&P, and (c) "BBB-" or higher by Fitch.

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

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

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

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

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

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

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

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

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

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

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

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

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

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

"**Downgrade Event**" is when a Person fails to maintain Creditworthiness.

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

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

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

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. 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, in each case at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Point of Delivery, 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, in compliance with the ESS Unit Capabilities, and subject to the terms and conditions of this agreement.

"**Energy Storage System**" or "**ESS**" means the battery arrays, battery system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's charging, discharging, delivery or storage of electricity from renewable energy resources in contrast with the storage 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

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

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Curtailment**" has the meaning set forth in Section 4.2.

"**ESS Energy Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Energy Payment Rate**" means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

"**ESS Meter Energy In**" has the meaning set forth in Exhibit F.

"**ESS Meter Energy Out**" has the meaning set forth in Exhibit F.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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(A).

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the 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.

"**Fitch**" means Fitch Ratings Inc and any successor thereto.

"**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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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 agreement or the procurement pursuant to this agreement 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 contemplated by this agreement, 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**" means discharge of the ESS at Guaranteed PMAX for four (4) consecutive hours.

"**Guaranteed ESS Roundtrip Efficiency**" means, with respect to a Commercial Operation Year, the applicable percentage set forth in Exhibit H.

"**Guaranteed Frequency Response Capability**" 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**" has the meaning set forth 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 as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

water, groundwater, and air, including but not limited to any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

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

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

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

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

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

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

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

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

"**Licensed Professional Engineer**" means an independent, professional engineer that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(4) Clean Energy Associates, or (5) Leidos Engineering, LLC; and (B) reasonably acceptable to Buyer (provided that at least one of the foregoing (A)(1)-(5) shall be reasonably acceptable to Buyer), licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

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

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

"**Market Event**" has the meaning set forth in Section 22.20.

"**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**" or "**Monthly**" means a calendar month.

"**Monthly Billing Period**" means each Month during the Term 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" means the maximum amount of electrical energy, expressed in megawatt-hours (MWh), that the Energy Storage System is designed to store and make available for discharge, net of auxiliary and parasitic loads, based on the manufacturer's rated specifications and measured at the applicable metering point.

"**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).

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

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

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

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

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

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

"**Outage Notice**" has the meaning set forth in Section 7.4(E).

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

"**PCS**" or "**Power Conditioning System**" means the Energy Storage System power conditioning system utilized to convert electric power from one form to another (AC to DC, DC to AC, and/or between different voltage levels), and to condition the power quality to what is needed by the interconnected systems.

"**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 ExhibitO.

"**Point of Delivery**" means the electric system point at which (i) Buyer delivers Charging Energy to Seller, (ii) Seller delivers Discharge Energy to Buyer and (iii) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**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 agreement.

"**Project**" means Seller's energy storage facility, located in Sandoval County, New Mexico, with a designed maximum power charge and discharge capability of 150 MW for four (4) hours (600 MWh), as identified and described in Article 3 and Exhibit A to this agreement, 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 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 agreement.

"**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(A).

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

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

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

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

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) Creditworthiness, and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project), or (b) is reasonably acceptable to Buyer.

"**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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Replacement ESS Costs**" means the costs to Buyer reasonable and necessary to replace the Product (including Future Environmental Attributes and Ancillary Services) as defined herein and based upon similar terms, conditions and performance standards outlined in this agreement which Seller, in accordance with this agreement, would have made available to Buyer but failed to so provide pursuant to this agreement. 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 (including Future Environmental Attributes and Ancillary Services) delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs 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 agreement.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**SCADA**" means the Project's remote supervisory control and data acquisition system, which includes all necessary components and contact points at the Project.

"**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 agreement, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"**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'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 agreement or in entering into new arrangements which replace this agreement; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this agreement.

"**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product as a result of: (a) a Force Majeure Event that affects the ability of Buyer to deliver Charging Energy or to receive Discharge Energy at the Point of Delivery, (b) any failure by Buyer to perform a material obligation under this agreement (other than due to a breach by Seller of its obligations under this agreement), (c) failure of Buyer to provide Charging Energy, (d) Emergency Condition, (e) Buyer's dispatch of the Project which is not in accordance with the Operating Parameters, (f) an ESS Curtailment or (g) the time that the Project is required to be offline or at limited capacity as a result of (i) annual required testing in accordance with this agreement or (ii) additional testing requested by Buyer in accordance with this agreement.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Product that would otherwise be made available from the Project at the Point of Delivery not associated with Seller Excused Hours.

"**Seller Guarantor**" means a Person that has delivered a Seller Guaranty for the benefit of Buyer.

"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit J.

"**Seller Permitted Transfer**" means any of the following: (a) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Ultimate Parent retains the ability to control the management and policies of Seller; (b) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction or (iii) a direct or indirect transfer to a Person of 50% or more of the shares of, or equity interests in, Seller; *provided*, that in the case of (b), (A) the transferee is a Qualified Transferee, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to any Seller's Lender and any subsequent assignee, designee or transferee thereof; provided that in the case of (c), (A) the Seller's Lender or its applicable assignee, designee or transferee is a Qualified Transferee and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e.,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, 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.

"**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 agreement. This agreement is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval. Adding or subtracting contiguous parcels of property will not be deemed a relocation requiring Buyer consent.

"**State of Charge**" or "**SOC**" means the level of charge as reported by the ESS, expressed in percent of Nameplate Energy Capacity.

"**Supplemental State Tax Incentives**" means any 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 State Tax Incentives, and any other tax credits that are or will be generated by or attributable to the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority.

"**Term**" means the period during which this agreement 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 transmission function capacity, owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means esVolta, LP.

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

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

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 agreement unless otherwise stated.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this agreement; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this agreement, the terms of this agreement shall take precedence.

(D) This agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this agreement and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this agreement 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 agreement. Unless expressly provided otherwise in this agreement, (i) where the agreement requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the agreement 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) All uses of the word "shall" in this agreement are to be interpreted as imperative and not permissive.

(H) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this agreement as a whole.

(I) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(J) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or."

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this agreement are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this agreement, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this agreement. This agreement shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this agreement, the Transmission Provider shall be deemed to be a separate entity and separate contracting party

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This agreement does not provide for the supply of retail electric power to the Project for any purpose ("House Energy"). Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter the Charging Energy and Discharge Energy of the ESS in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this agreement are not binding upon the Local Provider. For purposes of this agreement, 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 agreement, 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 agreement. This agreement shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Energy and for House Energy, backfeed power and station service power or (ii) a single Electric Metering Device that separately measures Energy and House Energy, backfeed power and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This agreement shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Standard 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 agreement

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this agreement, as each term is more fully set forth in this agreement:

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	**Seller:** Gila Monster Energy Storage, LLC
Project: Gila Monster Energy Storage Project	
Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this agreement, as further specified in the definition of "Point of Delivery."	
Delivery Term: 20 years	**Product Type:** Bundled Energy Storage Services, Ancillary Services, Future Environmental Attributes, ESS Capacity, and other ESS Unit Capabilities
ESS Energy Payment Rate: $14.75/MWh, as further specified in Section 8.1(A).	
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: 8/1/2030	

3.2 Project. Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit A to this agreement. Exhibit A also contains a preliminary

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

indication of the location of the ESS at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS and Interconnection Facilities at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the terms of this agreement and the Interconnection Agreement. The Project shall meet or exceed the recommended performance specifications of this Section 3.4(A) through Section 3.4(H), and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, 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 Interconnection Metering Standard from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply 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 immediate disconnection remotely by the System Control Center;

The Project shall meet or exceed the recommended performance specifications of this Section 3.4(I) through Section 3.4(K), and as appropriately defined in IEEE Standard 2800-2022 Section 5, Section 6 and Section 7 at the Point of Delivery at all times;

(I) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Section 5 at the Point of Delivery;

(J) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Section 7 at the Point of Delivery, which shall be Category II minimum;

(K) 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

(L) 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 Section 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this agreement, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis (a) up to a maximum of one hundred fifty (150) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event (together with a reasonable period for the affected Party to cure the Force Majeure Event as contemplated in Section 14.2) that delays construction or commencement of operation of the Project, (b) 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, or (c) other than in connection with or arising out of or relating to any Force Majeure Events or the interconnection of the Project, (i) if Seller

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

notifies Buyer that Seller requires a performance from Buyer of Buyer's obligations under Exhibit F or Exhibit O, and (ii) Buyer does not timely perform such obligations, then on a day-for-day basis without an aggregate cap for the time period for the days of delay beyond Buyer's failure to perform in a timely manner to the extent such failure by Buyer to perform 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 the Expected Commercial Operation Date is extended pursuant to clause (a) or (b) of this Section for the maximum extension period set forth in the applicable clause, then Buyer will have the right to terminate this agreement without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed ESS Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed ESS Capacity**" is an amount equal to the difference between the Guaranteed ESS Capacity and the ESS Capacity as of the determination date. The Delay Damages and, if applicable, Buyer Termination Payment subject to the limitations set forth in Section 12.3(B), are the Buyer's sole and exclusive monetary remedies, and Seller's sole and exclusive monetary liabilities, for Buyer's damages due to any delays in achieving, or failure to achieve, the Expected Commercial Operation Date.

3.8 ESS Capacity Shortfall Damages. 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**"), as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed ESS Capacity, in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8 and the ESS Energy Payment Rate shall be reduced by an amount proportional to the Delayed ESS Capacity.

3.9 Test Period. Seller shall, no later than ninety (90) Days prior to the beginning of the Test Period, give written notice to Buyer of its NERC-registered Generator Owner and Generator Operator and designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M. 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 Discharge 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 sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit K 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, and all the requirements of Commercial Operation have been met, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) Business Days after the date set forth in the Commercial Operation Notice. If 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) Capability to discharge at 150 MW (the "**Guaranteed PMAX**") for four (4) uninterrupted hours, as may be adjusted pursuant to Section 3.8;

(B) [Reserved];

(C) ESS Roundtrip Efficiency equal to the Guaranteed ESS Roundtrip

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Efficiency;

(D) Actual Discharge Ramp Rate equal to the Guaranteed PMAX per second measured between 85% State of Charge and 15% State of Charge (the "**Guaranteed Discharge Ramp Rate**");

(E) Actual Charge Ramp Rate equal to the Guaranteed PMAX per second measured between 15% State of Charge to 85% State of Charge (the "**Guaranteed Charge Ramp Rate**");

(F) **Guaranteed System Latency**: <1 second;

(G) **Guaranteed Frequency Response Capability**: Guaranteed PMAX/0.1Hz; and

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5. 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) Seller Excused Hours) or to comply with the requirements of Section 7.4(A).

(A) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, Guaranteed Frequency Response Capability, or Guaranteed System Latency during ESS Unit Capabilities testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. Provided, however, under no circumstances will ESS Non-Performance Liquidated Damages (other than ESS Capacity Shortfall Damages) exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year. As used in this Section 3.13(A), "event" means an occurrence causing a failure to comply by Seller lasting no more than seventy-two (72) hours; each exceedance of the seventy-two (72) hour cap by the same occurrence will be deemed a separate event. If multiple failures occur within 72-hours of the initial event, they will be treated as a single event if arising out of a common root cause.

3.14 Guaranteed ESS Roundtrip Efficiency Payment.

(A) 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 * [•] * (1 – (ESS Roundtrip Efficiency/Guaranteed ESS Roundtrip Efficiency)).

3.15 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this agreement is not

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

prohibited by Applicable Law. Any breach of this Section 3.15 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.16 Eligible Change in Tariff. To the extent an Eligible Change in Tariff occurs between the Execution Date and one (1) year after NMPRC Approval that requires Seller to take additional actions to comply with Seller's obligations under this agreement and the costs associated with such actions, if they had been reasonably contemplated as of the Execution Date, increase Seller's costs by more than one and a half percent (1.5%) of the Contract Value at Contract execution, 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; ESS Curtailment

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.

4.2 ESS Curtailment. An ESS Curtailment occurs any time the Project is unable to receive otherwise available Charging Energy or deliver otherwise available Discharge Energy to Buyer as a result of transmission limitations regardless of whether such curtailment is affected directly by Seller or Buyer, including as a result of Buyer's scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements ("**ESS Curtailment**").

ARTICLE 5
Delivery and Metering

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this agreement 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 agreement. 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 from the Project to Buyer at the Point of Delivery at the required voltage and frequency, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on the Project and any co-located generation systems sharing the same interconnection. If applicable, delivery of Energy from the co-located generation systems to the Transmission Provider's Transmission System shall take priority over Energy discharged from the ESS; and further provided, that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Energy discharged from the ESS shall take priority over delivery of Energy from co-located generation systems.

(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 as necessary under participation in any regional market, including the EIM or the EDAM, if any.

(E) Seller shall be responsible for separately sourcing, metering and payment for an electrical power supply and associated power consumption for the Project House Energy.

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 agreement shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Electric Metering Devices, including Primary Metering Devices and redundant metering ("**Back-Up Metering**") with independent current transformers ("**CTs**") and potential transformers ("**PTs**"), are installed at or near the Electric Interconnection Point that measures the Charging and Discharging Energy of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement 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 made available to Buyer by Seller under this agreement 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 agreement. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. 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 power and Energy, if supplied by either the co-located generation system or ESS system. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided* that the Parties may revise this loss adjustment based on actual experience. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, secondary, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A) and the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices or Secondary Metering are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device or Secondary Metering fails to register, or if the measurement made by an Electric Metering Device or Secondary Metering is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall first use Back-up Metering, followed by Secondary Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that such Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If 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 agreement are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(B) [RESERVED].

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; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this agreement.

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 agreement, 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 Buyer shall not be required to receive and purchase Product when and to the extent that (a) a Seller Forced Outage or a Scheduled Maintenance Outage is continuing, or (b) Seller's performance is excused during Seller Excused Hours or due to Force Majeure Event. At its sole discretion, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will 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 agreement.

7.2 Title and Risk of Loss. As between Seller and Buyer, Buyer shall be deemed to be in control of all Charging Energy up to delivery at the Point of Delivery, Seller shall be deemed to be in control of all Charging Energy from and after such delivery to the Point of Delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy at the Point of Delivery, and Buyer shall be deemed to be in control of all Discharge Energy from and after delivery and receipt at the Point of Delivery. Buyer shall at all times retain title and risk of loss for Charging Energy, Charging Energy that is stored in the ESS, and Discharge Energy. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this agreement all right and title to such Future Environmental Attributes is included in the ESS Energy Payment Rate and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this agreement. 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 agreement 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 agreement 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; provided, that Seller shall not be required to incur any costs for Buyer to receive the benefit of Future Environmental Attributes unless requested to do so 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. Buyer shall 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 policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) [RESERVED]

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) If, at any time following submission of a good faith estimate as described in Section 7.4(C) 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.

(E) Seller shall configure the ramp rate for the Project such that Discharge Energy will not increase at a rate greater than twenty (20) MW per minute.

7.5 Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

ARTICLE 8
Payment Calculations

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for test energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Energy Payment. Subject to the provisions of this agreement, Buyer shall pay Seller an amount equal to the product of (i) the ESS Capacity, not to exceed the Guaranteed ESS Capacity, multiplied by (ii) the Monthly Hours, multiplied by (iii) the ESS Energy Payment Rate, multiplied by (iv) Monthly ESS Availability, as determined in accordance with Exhibit I (the "**ESS Energy Payment**"). The ESS Energy Payment also compensates Seller for the associated Environmental Attributes and Ancillary Services, in any Monthly Billing Period. The ESS Energy Payment includes all Taxes.

Example: For a 30-Day Month, assuming 98% availability

ESS Energy Payment =

100 MW ×30 Days ×24 hours × $14.75/MWh ×0.98

(B) If Supplemental State 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 agreement. 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 agreement which are reasonably required to allow the Parties to receive the Supplemental State Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

(C) In the event that Seller, Affiliate of Seller or Tax Equity Investor becomes eligible to receive and receives any Supplemental State Tax Incentives with respect to the Project, the value of such Supplemental State Tax Incentives will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental State 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 value of such Supplemental State 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 agreement consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this agreement for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental State Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the 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 agreement (in Dollars) to Seller for the preceding Month. Each such invoice shall show the ESS Energy Payment, information and calculations, in reasonable detail.

(D) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(F) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this agreement, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this agreement shall be made in Dollars in immediately available cleared funds by wire transfer or electronic funds transfer into the relevant account specified in this agreement 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 agreement 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 lower of (i) the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) and (ii) the maximum interest rate allowed by Applicable Law ("**Default Rate**"), as

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. A Party must notify the other Party of any error within three hundred sixty-five (365) Days of such error.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, 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 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 agreement 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 agreement.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, value 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,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement and implement the provisions in this agreement in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this agreement 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 agreement, including Section 9.9 below, all payments between the Parties under this agreement 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 agreement, including damages and other payments that are owed by a Party to the other Party pursuant to this agreement. Undisputed and non-offset portions of amounts invoiced under this agreement 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 agreement, 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 agreement.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, Applicable Law and this agreement. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer Monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key Project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent Monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-13-16 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 Day 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 62-13-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not modify, alter, or otherwise change the Project without the

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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, annual performance, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this agreement and any documents ancillary hereto, neither this agreement 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 provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and ten (10) Days prior notice of the final tests scheduled relating to the commissioning of the Project Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this agreement, 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 agreement, 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 agreement, 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 all requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this agreement. 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, Section 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 standards and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than thirty (30) Days before the Commercial

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "Operating Procedures"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of Day-to-Day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this agreement, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

(A) Seller will prepare detailed test protocols and procedures for any tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this agreement. The protocols and procedures will be developed by Seller in accordance with the requirements of the agreement 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 withheld unreasonably.

(B) Not later than one hundred eighty (180) Days before the Commercial Operation Date, Seller and Buyer shall develop mutually agreeable written test protocols, based upon the methodologies identified in Exhibit F to quantify the ESS Unit Capabilities. Seller will perform annual ESS Unit Capabilities tests in accordance with those test protocols and procedures and promptly provide the results to Buyer. With the exception of the cost for Charging Energy provided by Buyer, the annual ESS Unit Capabilities tests will be performed at Seller's expense. Annual testing for ESS Capacity and Guaranteed ESS Roundtrip Efficiency shall consist of two annual tests. Each of Buyer and Seller may elect up to two additional tests to be performed at a mutually agreed time. Within thirty (30) Days of the completion of an ESS Capacity or ESS Roundtrip Efficiency test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the basis of compliance with the applicable guarantee and the basis of applicable liquidated damages in Section 3.13, adjustment to the ESS Roundtrip Efficiency payment as outlined in Section 3.14, or adjustment to the ESS Energy Payment as outlined in Section 8.1(A).

(C) Testing for all remaining ESS Unit Capabilities, including Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, Guaranteed System Latency, Guaranteed

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Frequency Response Capability, and capability to support Ancillary Services (collectively, "Buyer-Requested Performance Tests") shall be performed once per Commercial Operation Year. Upon failure to pass any of these ESS Unit Capabilities tests, Seller will have ninety (90) Days from the test date to cure any deficiencies in the test.

(D) For all ESS Unit Capabilities tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the test and Buyer shall have the option to inspect the Project during such test.

(E) For all ESS Unit Capabilities tests and re-tests, Seller shall provide a test report including all performance data, model simulations, calculations, and test reports to the Buyer for analysis and approval.

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 agreement. 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 October 15 for the period of June 1 through November 30 for the following Commercial Operation Year and by no later than April 15 for the subsequent period of December 1 through May 31. Should Buyer desire to change the reporting dates noted above as a result of Buyer's participation in a regional market or program (including the Western Resource Adequacy Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the April 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 will be subject to approval by Buyer, not to be unreasonably withheld. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th, December, or January without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, 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. Prior notice and Buyer approval shall not be required if such project maintenance is required for safety, Emergency Conditions, or compliance with Applicable Law and cannot be delayed until the next Scheduled Maintenance Outage.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the fifteenth (15th) Day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**"). 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; meteorological data; 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. If any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 [Reserved].

ARTICLE 11
Future Environmental Attributes

11.1 Sale of Future Environmental Attributes.

If Future Environmental Attributes become available, this Article 11 shall apply.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to 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 creation. The value of the Future Environmental Attributes transferred under this agreement shall be included in the ESS Energy Payment Rate.

(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 agreement, but not used, sold, assigned or otherwise transferred during the Term of this agreement. Buyer may, to the extent permitted by Applicable Law and this agreement, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement or any successor provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(E) Seller shall register the Project, as necessary, no later than thirty (30) Days after Buyer notifies Seller of the availability of such Future Environmental Attributes, 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. Notwithstanding the foregoing, Seller shall not be required to expend more than Five Thousand Dollars ($5,000) per MW annually and Ten Thousand Dollars ($10,000) per MW in the aggregate to maintain compliance due to regulatory changes relating to Future Environmental Attributes.

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this agreement (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 voluntarily taking advantage of any such law by answer or otherwise;

(4) Except during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this agreement or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this agreement, or other date mutually agreed to by the Parties in writing;

(7) Seller's assignment of this agreement, 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The failure of Seller to make any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

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

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including the Interconnection Agreement) required to make Product available at the Point of Delivery;

(3) Seller's failure to make any payment due to Buyer under or in connection with this agreement (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 agreement);

(4) Seller's failure to comply with any other material obligation under this agreement, which would result in a material adverse impact on Buyer; or

(5) Should Future Environmental Attributes become available and Seller fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this agreement.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this agreement shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise; or

(4) Buyer's assignment of this agreement except as permitted in accordance with Article 18.

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this agreement) shall constitute an Event of Default upon the failure of Buyer to cure within thirty (30) Days of written notice from Seller to Buyer.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period; or

(2) Any representation or warranty made by Buyer in this agreement

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this agreement 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 agreement 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 agreement 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 and (y) the ESS Energy Payment Rate; *provided, however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer.* 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 pursuant to this agreement, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this agreement for the procurement of Product, which includes 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 Energy 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, but in no event less than Zero Dollars ($0.00). Seller shall use commercially reasonable efforts to avoid, minimize or mitigate Seller's damages.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this agreement 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 agreement, 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 agreement 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 agreement. Upon the termination of this agreement 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. 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.

(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.

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 agreement.

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 agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this agreement, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this agreement, 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 agreement.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this agreement, 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 agreement 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 agreement to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement. 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 agreement 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 agreement.

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 agreement, 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 agreement 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 agreement (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this agreement. 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 Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) monthly construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this agreement, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this agreement, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; and (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only, and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this agreement, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this agreement. 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 agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, Exhibit C, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this agreement 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 agreement, 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. If 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. If 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**" means an event or circumstance that arises, after the Execution Date, that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this agreement. 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,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws; (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 agreement beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of two hundred seventy (270) 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 agreement 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 agreement, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. If any delay or nonperformance results from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this agreement 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 its effects impact the ability of:

(A) Seller to deliver Discharge Energy from the Project or to accept Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment;

(B) Buyer to receive Discharge Energy from the Project or to deliver Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment; or

(C) both Buyer and Seller to perform the acts described in (A) and (B), then the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this agreement.

(B) The execution, delivery, and performance of its obligations under this agreement 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 agreement;

(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 agreement; 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 agreement) 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 agreement.

(C) The obligations of Seller under this agreement are valid and binding obligations of Seller.

(D) The execution and performance of this agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Seller's execution, delivery and performance of this agreement have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

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

(L) All right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) The Future Environmental Attributes comply with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) [Reserved].

(P) [Reserved].

(Q) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(R) This ESA does not grant Buyer an option to purchase the Project or any portion of the associated assets at any time during or after the end of the Term.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

(B) The execution, delivery, and performance of its obligations under this agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this agreement;

(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 agreement; 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 agreement) 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 agreement.

(C) This agreement is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this agreement 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 agreement have been duly obtained and are in full force and effect.

ARTICLE 16
Insurance

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 within thirty (30) Days of the annual insurance policy renewal or update or change of the insurance policy, 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 agreement 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 agreement shall cover occurrences during the Term of this agreement on an "occurrence" basis. If 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 agreement, 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 respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this agreement 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 respective

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 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 agreement. 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 agreement 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 NMPRC Approval in connection with (i) the execution and performance of this agreement; and (ii) any waivers as set forth in Buyer's request for approval of this agreement (collectively, "**Requested Actions**"). An NMPRC order that defers action on cost recovery to a future case shall not be a material adverse financial order. In particular:

(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 with no material adverse financial determination, which final written order is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, *provided* that each of Seller and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(1) If the NMPRC disapproves any of the Requested Actions, then this agreement shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer will amend this agreement to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this agreement. If the Parties are unable to mutually agree on any amendments to this agreement to address such NMPRC Approval order, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval by 11:59 P.M. of December 31, 2026 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, 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 agreement by Seller to an Affiliate of Seller; (ii) a Seller Permitted Transfer; or (iii) any assignment or transfer of this agreement 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), (ii) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) 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 agreement.

(B) Seller's consent shall not be required for any assignment of this agreement by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, or consolidation of Buyer or its parent corporation, *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 such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this agreement as and if required by NMPRC regulations and will resell the Product hereunder.

18.2 Conditions on Transfers. If the rights and interests of a Party in this agreement 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 agreement 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 agreement with the Affiliate as if such Person had been named under this agreement; *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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement made without fulfilling the requirements of this agreement 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 agreement 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 and licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this agreement by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, (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 agreement; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this agreement 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 agreement 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 third-party 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 agreement.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this agreement 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 agreement; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this agreement and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

this agreement 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, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed ESS Capacity, (the "**Development Security**"), the first Fifty Thousand Dollars ($50,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Fifty Thousand Dollars ($50,000) per MW of which will be posted no later than eighteen (18) months prior to the Expected Commercial Operation Date. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed ESS Capacity (the "**Delivery Term Security**"). Seller 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 ESS Capacity Shortfall Damages and provided the Delivery Term Security. If no amounts are due and owing under this agreement and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) Day after termination of this agreement in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer:

(a) cash, (b) a Letter of Credit in form acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be 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 Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) Days before expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or ten (10) Business Days if the only event is that the credit rating of the issuer bank of a Letter of Credit has fallen below the Issuer Minimum Requirements) (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this agreement, 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 the Development Security or Delivery Term Security, as applicable to recover any amounts owing to it arising out of this agreement, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this agreement. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this agreement, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this agreement.

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 ("**Buyer's Indemnified Persons**"), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 ("**Seller's Indemnified Persons**"), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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. If 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 to the applicable Governmental Authority 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 on the making available of Product arising 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 to the applicable Governmental Authority 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 agreement 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 agreement, 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 agreement, or any contractual obligation,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this agreement shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this agreement whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this agreement, 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 agreement 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 agreement.

22.5 Relationship of the Parties.

(A) This agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement 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 agreement, 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 agreement 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 agreement with a view toward effecting the purposes of this agreement 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 agreement constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this agreement, this agreement 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 agreement, 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 agreement are for ease of reference only and do not constitute a part of this agreement.

22.12 Counterparts. This agreement 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. The interpretation and performance of this agreement 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

of any other law. All disputes arising out of or related to this agreement shall be brought in the United States District Court for the District of New Mexico; the Parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED**.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "Disclosing Party" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this agreement, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, 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 agreement. 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). To the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public.

(C) As used in this Section 22.14, "**Confidential Information**" means all information that is furnished in connection with this agreement 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 agreement (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic), and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf), or which concerns this agreement, the Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this agreement. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this agreement:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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 Receiving Party's Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; 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 agreement, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this agreement, 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 agreement, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this agreement that relates solely to this agreement 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 agreement, 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, prior to disclosure, inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall immediately notify Buyer 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)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

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

(A) Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this agreement, 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 agreement (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this agreement or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

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 agreement, 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 agreement. 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions, and Buyer shall be responsible for Seller's reasonable third-party costs associated with assisting Buyer in such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this agreement constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code § 101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code § 101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this agreement (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 agreement, 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 Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

22.19 Telephone Recording. Each Party to this agreement 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 agreement. 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. If a dispute occurs between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Recording to the other Party upon request.

22.20 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this agreement, the Parties shall negotiate in good faith to amend this agreement to resolve such changes in order to effect performance of this agreement, at the least possible cost to the Parties, consistent with this agreement, including Section 7.4(A). To the extent that the Parties are unable to do so, either Party may initiate the process set forth in Section 13.8.

[Signature page(s) follow]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

IN WITNESS WHEREOF, the Parties have caused this agreement to be duly executed as of the date first above written. This agreement shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Laurie Williams B87ED845D25E4D9...

Name Laurie A Williams

Title Senior Vice President

GILA MONSTER ENERGY STORAGE, LLC

By Rishad Olpadwala

Name Rishad Olpadwala

Title Chief Development Officer

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT A
DESCRIPTION OF SELLER'S ENERGY STORAGE FACILITIES, SITE MAP, AND PROJECT SCHEDULE

1. Name of Seller's Project: Gila Monster Energy Storage Project

2. Location: Rio Rancho, New Mexico

3. Owner (if different from Seller):

4. Operator: Gila Monster Energy Storage, LLC

5. 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 (to be confirmed after final BESS equipment selection)

   c. Total nameplate capacity (AC): 150 MW

   d. Total capacity at point of delivery: 150 MW

   e. Additional technology-specific information:

   f. Battery chemistry: Lithium-ion

6. Project Schedule:

Key Milestone	Date
LGIA Execution	1/29/2025
Major Equipment Supply Agreements Executed	9/1/2025
Discretionary Permits	8/24/2022
Close Financing	1/1/2029
30% Design Complete	1/1/2028
Start of Project Construction	11/1/2028
First Major Equipment Delivered to Site	5/1/2029
Interconnection In-Service Date	12/1/2029

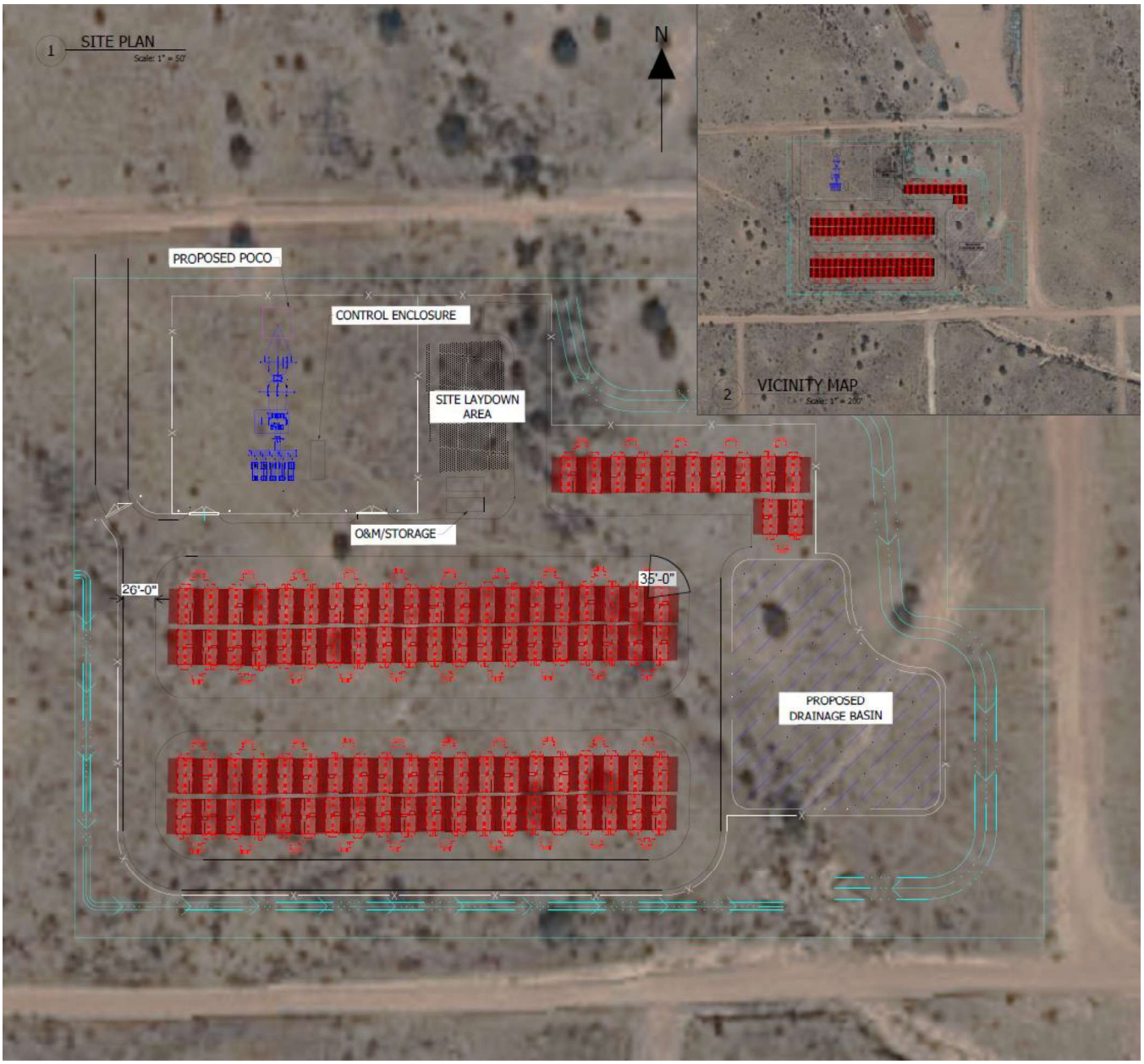
Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Commissioning Start Date	2/1/2030
Expected Commercial Operation	8/1/2030
Guaranteed Start Date	1/1/2031

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the agreement.

Site Map



Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT B
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 PNM Rio Puerco Satellite 115 kV Station, as defined in the Interconnection Agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT C
DESCRIPTION OF SITE[1] PARCEL SURVEY FOR GILA MONSTER ENERGY STORAGE PROJECT

That certain real property in Rio Rancho, Sandoval County, New Mexico, more particularly described as follows:

Lots 16–24, inclusive, and Lots 26–31, inclusive, in Block 84, Unit 24, as the same are shown and designated on the Plat entitled "Blocks 67 Thru 90 Portions of Blocks 59 & 60 Unit Twenty-Four Rio Rancho Estates Sandoval County, New Mexico," as recorded in the Sandoval County New Mexico real estate records on April 16, 1970, in Volume 2, Folio 27.

[1] NTD: To be updated ~60 days prior to COD.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT D
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

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

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

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

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:
Wells Fargo Bank
ABA# [●]
Albuquerque, New Mexico
ME Whsle Pwr Depository: 6515377916
Attn: EA-Wholesale Power Marketing

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

Gila Monster Energy Storage, LLC

All Notices/Invoices:

Delivery Address:
100 Bayview Circle, Suite 340

Newport Beach, CA 92660

Attn: VP, Asset Management
Email: AssetManagement@esvolta.com

Phone: (626) 989-1154

With copy to:
Attn: Legal Department
Email: legal@esvolta.com

Mailing Address (if different from above):

Wire Transfer: [●]

Attn: Treasury Department

Email: treasury@esvolta.com

With additional Notice of an Event of Default, termination and other legal notices to:
Attn: General Counsel
Address: 100 Bayview Circle, Suite 340
Newport Beach, CA 92660

Email: legal@esvolta.com

Project Manager:
[●]
Attn: [●]
Address: [●]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

Public Service Company of New Mexico
Attention: Laurie Williams
414 Silver Ave. SW
Albuquerque, NM 87102
Telephone: (505) 241-0641
Fax: [•]

With a copy to:

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT E

SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
Commercial/Industrial Development Review Committee (C/IDRC) Approval	*Sandoval County*
New Mexico Construction Industries Division (NMCID)	State of New Mexico
Notice of Proposed Construction (Form 7460-1)	*Federal Aviation Administration (FAA)*

NOTE: Final actual permit requirements may vary from the above listings due to code and regulatory requirements as needed for Project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of the agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT F
COMMISSIONING AND ANNUAL TESTING

Commissioning Tests

- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- SCADA Functionality Test (or equivalent)
- Owner Control and Data Link Functionality Tests (See Section C in this Exhibit F)
- ESS Unit Capabilities Testing
- ESS Solar Capacity Firming Test (if applicable)

Annual Testing

- ESS Unit Capabilities Testing

Commissioning Procedures

Final testing and commissioning procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements may be modified to account for factory-performed commissioning procedures and otherwise updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures. The final energy storage plant testing and commissioning process will be based on as-built design and plant configuration, and shall verify the final, as-assembled operation. The approach shall be confirmed with all equipment suppliers to ensure a safe process.

PHASE 1 – Battery to PCS

A. Battery Module
    1. Prior to installing each battery module:
        a. Test and confirm battery module voltage

B. Battery String
    1. Once the battery modules are installed in the battery rack with the necessary electrical and communication connections with the battery switchgear and Rack BMS:
        a. Confirm battery modules have auxiliary power supply
        b. Confirm battery modules communicate with rack BMS
            i. Read the System BMS and check whether the battery banks are operable, or not.
        c. Repeat steps i through ii for all battery strings connected to the PCS.
        d. Once communication is confirmed between the battery string and the System BMS, test and confirm battery string voltage on input terminals of Switchgear, one string at a time.
        e. Once complete, send all DC contactor "on" command to the System BMS and check the DC contactor's status via the System BMS.
        f. Initiate the pre-charge circuit to balance the battery strings prior per the battery vendor specifications.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

C. Battery Bank
   1. Once all of the battery strings within a bank are connected to the input on the PCS and the System BMS, and each input on the PCS is complete with the necessary battery bank connections:
      a. Confirm communication between the System BMS and the PCS (via the EMS, or direct)
      b. Confirm voltage on the PCS terminals is within the battery manufacturer requirements to connect the strings in parallel.

D. PCS
   1. Connect a temporary power supply such as a generator to the PCS to charge the battery bank.
   2. Turn on the PCS.
   3. Charge the battery bank.
   4. Disconnect the temporary power supply.
   5. Connect the PCS to a load bank.
   6. Discharge the battery bank into the load bank.
      a. Confirm the battery bank capacity (kWh) based on power for duration.

E. Repeat steps 1 through 4 for every PCS in the Energy Storage System.

F. End of Phase 1

G. PHASE 2 – PCS to MV Bus in Substation

H. Medium Voltage Block
   1. Disconnect / isolate the battery bank voltage from the PCS
   2. Connect the PCS to the medium voltage transformer.
   3. Connect the Medium Voltage Blocks to the Medium Voltage Feeder
   4. Connect the Medium Voltage Feeder to the Medium Voltage bus in the substation via the MV circuit breaker.
   5. With all blocks connected to the Medium Voltage Feeder (approximately 8-10 blocks per MV Feeder), test and commission each MV block, one at a time. (This assumes the substation is energized and capable of charging and discharging.)

      a. Charge each block to 100% SOC.
      b. Let the battery rest as recommended by the battery vendor.
      c. Discharge each block to 0% SOC.
      d. Open the MV Feeder circuit breaker upon completion.

I. Repeat steps 1 through 2 for all Medium Voltage Feeders

J. End of Phase 2

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

K. PHASE 3 – MV bus to POI

L. One MV Feeder at a time, close the MV Feeder Breaker, and energize all of the blocks on the feeder.
M. Allow the MV Feeder to charge and then discharge. Once complete, repeat step 1 for all MV Feeders.

Commissioning Testing

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

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. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this profile shall not cause the ESS to charge from the grid.

Procedure**:**

1. Record the ESS active power level at the Electric Metering Device.

2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.

3. Upon confirmation of the availability of sufficient output from Seller's other projects or to the extent of authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

SCADA Functionality Test

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

Owner Control and Data Link Functionality Test

Seller shall prepare and submit to Buyer an Owner Control and Data Link Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Owner Control and Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

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 agreement and battery manufacturer's then-current operating and testing requirements]

Commissioning and Annual 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 agreement) throughout the term of the agreement. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

A. ESS Unit Capabilities Testing

1. ESS Capacity Test

a. 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).

b. Requirements Applicable to all ESS Capacity Tests

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

i. Purpose of Test. Each ECT shall:

- determine the ESS Capacity for the purposes of this agreement;
- determine the Roundtrip Efficiency (RTE) of the ESS;

ii. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

- discharge time (minutes);
- ESS Charging Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy In**");
- ESS Discharge Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy Out**");
- 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**");
- 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**");

iii. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

iv. Test Elements and Sequence. Each ECT shall include the following test elements:

- starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate setpoint equal to the Guaranteed ESS Capacity;
- the determination of Point of Delivery Energy In, as measured by the 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.
- the discharging of the ESS from a 100% State of Charge at a power discharge rate setpoint equal to the Guaranteed ESS Capacity (MW);
- the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging at the Guaranteed ESS Capacity;
- 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 Electric Metering Device shall be programmed to correct for losses between the 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;

v. Test Conditions.

- 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.

- 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 E.1.2.F of these ESS Capacity Test Procedures.

- 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.

- 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 0 of the agreement.

vi. 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), 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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.

vii. 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:

- A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
- 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;
- The ESS Capacity as determined by the ECT, including supporting calculations; and
- 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 A(1)(b)(vi) of this ESS Capacity Test Procedure.

viii. Supplementary ESS Capacity Test Protocol. No later than one hundred eighty (180) 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 Project (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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

maintained by the Parties.

ix. 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 agreement, 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 agreement.

x. 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:

$$Roundtrip\ Efficiency(\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})}$$

2. ESS Response Delay Test

a. **Purpose of Test:**

i. Determine the Actual Charge Ramp Rate of the ESS

ii. Determine the Actual Discharge Ramp Rate of the ESS

b. **Test Conditions:**

The Project 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. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this test shall not cause the ESS to charge from the grid.

c. **Test procedure:**

i. Actual Charge Ramp Rate:

- Send an active power charge command of Guaranteed PMAX to charge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX charge command until the power measured at the Electric Metering Device changes from 0MW to at least 1% of charge Guaranteed PMAX shall be

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

the Charge Ramp Latency

- The time measured to ramp from 1% to charge Guaranteed 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

ii. Actual Discharge Ramp Rate:

- Send an active power discharge command of Guaranteed PMAX to discharge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX discharge command until the power measured at the Electric Metering Device changes from 0MW to at least 1% of discharge Guaranteed PMAX shall be the Discharge Ramp Latency

- The time measured to ramp from 1% to discharge Guaranteed 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

iii. **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 3.13.

- An "**Actual System Latency**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency = Max(Charge\ Ramp\ Latency, Discharge\ Ramp\ Latency)$$

- An "**Actual System Latency Delay**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency\ Delay = Max(Guaranteed\ System\ Latency, Actual\ System\ Latency) - Guaranteed\ System\ Latency$$

- An "**Actual Discharge Ramp Rate Delay**" shall be calculated, which shall be equal to:

$$Actual\ Discharge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Discharge\ Ramp\ Rate, Actual\ Discharge\ Ramp\ Rate) - Guaranteed\ Discharge\ Ramp\ Rate$$

- An "**Actual Charge Ramp Rate Delay**" shall be calculated, which shall be equal to:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

$$Actual\ Charge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Charge\ Ramp\ Rate, Actual\ Charge\ Ramp\ Rate) - Guaranteed\ Charge\ Ramp\ Rate$$

- The "**Charging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Charging\ ESS\ Response\ Delay = Actual\ Charge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- The "**Discharging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Discharging\ ESS\ Response\ Delay = Actual\ Discharge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- 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 Electric Metering Device is a positive value during an ESS Unit Capabilities test, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT G
INSURANCE COVERAGES

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

A. Workers' Compensation Insurance that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million Dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Network Security and Privacy Liability. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

F. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

G. 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 Seller 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 Seller 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 Seller 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

force or through an extended reporting period. Seller shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Seller 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT H

ROUNDTRIP EFFICIENCY GUARANTEE

Year	Annual R/T Eff
1	86.28%
2	85.87%
3	85.66%
4	85.37%
5	85.26%
6	85.06%
7	84.95%
8	84.67%
9	84.56%
10	84.36%
11	84.25%
12	84.25%
13	84.14%
14	84.13%
15	84.11%
16	84.04%
17	84.02%
18	83.91%
19	83.89%
20	83.88%

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT I

AVAILABILITY CALCULATIONS

Section 1. Definitions.

Capitalized terms used in this Exhibit I and not defined herein shall have the meaning assigned in 0 of the agreement.

"**ESS Excused Hours**" means the aggregate Seller Excused Hours to the extent that the ESS is affected during such hours, but shall not include any hours described in clause (e) of the definition of ESS Unavailable Hours. 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 Unavailable Hours**" means those 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 ESS Excused Hour); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; (d) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy; or (e) unavailable due to the conditions described in Section 14.4. 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 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 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 Month. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the Monthly 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 Hours**" means the product of (a) twenty-four (24), multiplied by (b) the number of Days in such Month.

"**Monthly Report**" has the meaning set forth in Section 3 of this Exhibit.

Section 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 (excluding ESS Non-Performance Liquidated Damages pursuant to Section 3.13 of the agreement or ESS Roundtrip Efficiency deficiencies pursuant to Section 3.14 of the agreement) shall be reductions to the ESS Energy Payments due to any

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Monthly ESS Availability percentages that are less than 100%, and in each case 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.

Section 3. Monthly Report.

No later than the tenth (10th) Day of each 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 Month (the "**Monthly Report**").

Section 4. Disputes.

Disputes as to any calculations under this Exhibit I shall be addressed as provided in Section 13.8 of the agreement.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

ATTACHMENT 1 TO EXHIBIT I

EXAMPLE CALCULATION

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 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 Month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Monthly Hours: 720 hours

(c) Monthly ESS Availability: Sum of Monthly ESS Available Hours/Monthly Hours = 634/720 = 88.1%

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT J

FORM OF SELLER GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, _____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("**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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 [●] duly organized and validly existing under the laws of the State of [●] and has the [●] 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 [●]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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

4. RESERVATION OF CERTAIN DEFENSES.

(a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the agreement that Obligor may assert that is based on Counterparty's breach of the agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the agreement or the lack of validity or enforceability of Obligor's obligations under the agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

(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*):

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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:_____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT K

COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by _____("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the agreement.

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of [●] MW for [●] ([●]) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project 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: _____

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT L

ESS OPERATING RESTRICTIONS

Subject to the terms of this agreement, the ESS shall be operated in accordance with the following operating restrictions:

1. TBD

[*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 agreement and the ESS Manufacturer's then-current operating and testing requirements*]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT M

ESS FUNCTIONAL MAPPING

The Project's NERC verified ESS Generator 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)				

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT N

INTERCONNECTION METERING STANDARD

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT O

PREPARATION FOR COMMISSIONING

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 agreement and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the agreement and complete all testing as defined in Exhibit F of the agreement.

Figure 1 is for reference purposes only.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the agreement.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.

CONTACT	Company	Group	Address	Project Role	Office Phone	Mobile Phone	E-MAIL
(name)	PNM	Generation Engineering	2401 Aztec Rd NE Albuquerque, NM 87107	Contract Manager	505-241-XXXX	505-241-XXXX	…@pnm.com

The POC List shall identify, but not be limited to, the following:

Buyer Team: Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project

management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.

- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.

- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.

- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect modeling for functionality required for the participating resource schedule coordination (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.

- "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- **"Project Manager" –** Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.

- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.

- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.

- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.

- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

    - Balancing Authority (BA)
    - 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:

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

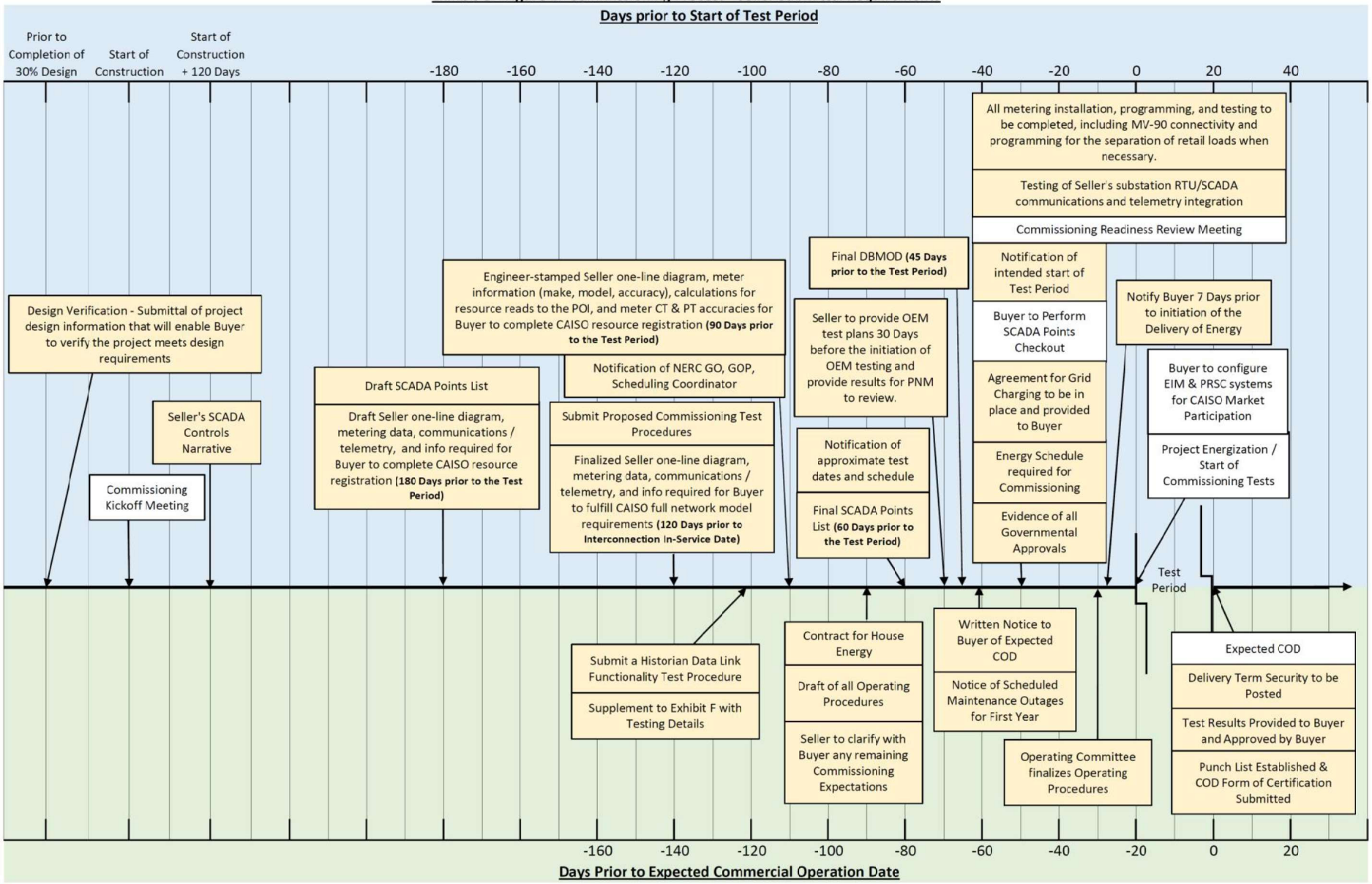
TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving agreement 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	10 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing.	**Seller**	Buyer's Project Manager	Prior to the scheduled performance testing
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	Prior to the scheduled performance testing
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. 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. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
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
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 agreement 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.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 agreement.

- 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 agreement) 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

    - 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. DERMS Workbook inputs:
   a. Seller shall provide required information for the DERMS, including:
      - SCADA keys, resource characteristics, meteorology, etc.
      - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 the test evaluation results might 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

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

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 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.